THE COMMON-WEALTH OF ENGLAND, AND manner of gouernment thereof.

Compiled by the honourable Sir *Thomas Smith*, Knight, Doctor of both lawes, & one of the principall Secretaries vnto two most worthy Princes, King *Edward*, & Queene *Elizabeth*: With new additions of the chiefe Courts in England, & the offices thereof, by the said Authour. Also a Table added thereto, of all the principall matters contained in this Treatise.

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To the Reader.

TO conceale the graces inſpired by God, or the gifts ingraffed by nature, or the vertues atchiued vnto our ſelues by induſtrie, in all ages, and of all wiſe men was accounted vndutifulneſſe, vnkindnes, and impietie vnto that Common-wealth, in the which, and vnto the which we are both bredde and borne: but to ſuppreſſe the worthy workes of any Authour, may iuſtly be iudged not onely iniurie to the perſon, but euen enuie at the whole world. Wherefore, chauncing vpon this ſhort diſcourſe, compiled by the honorable Knight Sir *Thomas Smith*, and conſidering that the ſame could not but be a great delight to the ignorant, & no leſſe delight vnto the learned in the lawes and policie of ſundry Regiments: I thought it part of my dutie, as well for the reuiuing of the fame of ſo notable a man, as for the publicke imparting of ſo pithy a Treatiſe, to preſent the ſame vnto thy indifferent and diſcreet iudgement. Wherein, although the errors and raſhneſſe of Scribes, appearing in the contrarietie, and corruption of coppies, happening both by the length of time ſince the firſt making, as alſo by the often tranſcripting, might

iuſtly haue beene mine excuſe, or rather diſcourage: yet weighing the authoritie of the Author together with the grauity of the matter, I made no doubt but that the reuerence due vnto the one, & the recompence deſerued by the other, would eaſily counteruaile all faults commited by a Clarke & Writer. And whereas ſome termes or other matters may ſeeme to diſſent from the vſuall phraſe of the common lawes of this Realme: notwithſtanding, to him that will conſider that the profeſsion of the maker was principally in the ciuill lawes, and therefore not to expected as one excellent in both, and alſo that the finiſhing of this worke was in Fraunce, farre from his Library, and in an Embaſſage, euen in the midſt of waighty affayres, it cannot, nor ought not without great ingratitude bee diſpleaſant, or in any ſort diſliking. VVherefore (gentle Reader) accept in good part my zeale, and thys honourable mans trauaile, aſſuring thy ſelfe that the ſame framed by an expert workmaiſter, and forged of pure and excellent mettall, will not faile in prooving to bee a right commodious inſtrument.

Vale.

A Table of all the principall matters contayned in this Booke.

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THE

THE MANNER OF Gouernment or policie of the *Realme of England.*

(·.·)

Of the diuerſities of Common-wealths *or Gouernment.*

CHAPTER. I.

THey that haue written heere-to-fore of Common-wealths, haue brought them into three moſt ſimple & ſpeciall kindes or fashions of gouernment. The firſt, where one alone doth gouerne, is called of the Greeks Μοναρχία. The ſecond, where the ſmaller number, commonly called of them Ἀριστοκρατία, and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderſtood to haue the highest & ſupreame authoritie of commaundement. That part or member of the common-wealth is ſaid to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define and commaunde according to the forme of the gouerment, is taken in-euerie Common-wealth to be iuſt and lawe: As a rule is alway to be vnderſtood to be ſtraight, and to which all

Monarchia. Ariſtocratia, Democratia.

worke to be conformed, and by it to be iudged: I doe not meane the Lesbians rule, which is conformed to the stone: but the right rule whereby the Artificer and the Architect do iudge the straightnes of euery mans worke, hee to be reckoned to make his workes perfectest, who goeth nerest to the straightnesse.

What is iust or law in euery Common-weath or gouernment.

CHAP. 2.

NOw it doth appeare, that it is profitable to euery cõmon-wealth (as it is to euery thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the cõmandement of that part which doth rule on that sort, is to be accepted in euery Common-wealth respectiuely to be iust (as we haue said before) it must nedes follow, that ỹ definition which Thrasimachus did make, that to be iust, which is the profite of the ruling & most strong part (if it be meant of ỹ citty or Cõmon-wealth, is not so farre out of the way, if it be ciuillie vnderstoode) as Plato would make it. But as there is profitable, and likelihood of profit, so there is right and likelihood of right. And as well may the ruling and soueraigne part commaund that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the Common-wealth, and do good vnto it. For inasmuch as hee attempteth to doe contrarie to the Lawe which is already put, hee therefore by the lawe is iustly to be condemned, because his doing is

Iust.

is contrarie to the lawe, and the ordinance of that part which doth commaund.

Another diuision of Common-wealths.

CHAP. 3.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater nũber, they which haue more methodically, and more distinctly & perfitly written vpon them, doe make a subdiuision: and deuiding each into two, make the one good and iust, and the other euil and vniust: as, where one ruleth, the one they call a King, or βασιλεὺς, the other τύραννον, a Tyrant: where the fewer number, the one they name a gouerning of the best men ἀριστοκρατία, or *Remp. optimatum*, the other of the vsurping of a few Gentlemen, or a fewe of the richer and stronger sort, ὀλιγαρχία, or *Paucorum potestatem*: and where the multitude doth gouerne, the one they call a cõmon-wealth by the generall name πολιτεία, or the rule of the people δημοκρατία, the other, the rule or the vsurping of the popular, or rascall or viler sort, because they be moe in number, δημοκρατία ἀκρατής.

Examples of changes in the maner of Gouernment.

CHAP. 4.

In Common-wealths which haue had long continuance, the diuersities of times haue made al these maners of ruling or gouernment to be seene: as in *Rome*, kings, Romulus, Numa, Seruius, tyrants, Tarquinius, Sylla, Cæsar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the

ſucceſſion of the Tribunate, and manifeſtly in the Decemuirate, but more perniciouſly in the Triumuirate of Cæſar, Craſſus, and Pompeius: and afterward in the Triumuirate of Octauius, Antonius, and Lepidus: The common-wealth and rule of the people, as in the expulſing of the Decemuiri, and long after, eſpecially after the lawe was made, either by Horatius, or (as ſome would haue it) Hortentius, *quod plebs ſciuerit, id populum teneat*: And the ruling and vſurping of the popular and raſcall, as a little before Sylla his raigne, & a litle before Caius Cæſars raigne. For the vſurping of the raſcalitie can neuer long indure, but neceſſarily breedeth, & quickly bringeth forth a tyrant. Of this hath Athence, Siracuſe, Lacedemon, and other old ancient ruling Citties had experience, and a man need not doubt but that other common-wealths haue followed the ſame rate. For the nature of man is, neuer to ſtand ſtill in one manner of eſtate, but to grow from the leſſe to the more, and decay from the more againe to the leſſe, till it come to the fatal end & deſtruction, with many turnes and turmoiles of ſickneſs, and recouering, ſeldome ſtanding in a perfect health neither of a mans body it ſelfe, nor of the politicke body which is compact of the ſame.

Of the queſtion what is right and iuſt in euery Common-wealth.

CHAP. 5.

SO when the common-wealth is euill gouerned by an euil ruler and vniuſt (as in the three laſt named which be rather a ſickneſs of the politick body, then perfect & good eſtates) if the lawes be made, as moſt like they be alwaies to maintaine that eſtate: the queſtion remaineth, whether the obedience of thē be iuſt, & the

the disobedience wrong? the profit and conservation of that estate right & iustice, or the dissolution? and whether a good and vpright man, and louer of his countrey ought to maintaine and obey them, or to seeke by all meanes to abolish them? which great and haughty courages haue often attempted: as Dion to rise vp against Dyonisius, Thrasibulus against the xxx. tyrants, Brutus and Cassius against Cæsar, which hath bin cause of many commotions in common-wealths, whereof ỹ iudgement of the common people is according to the euent and successe: of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certaine it is that it is alwaies a doubtful and hazardous matter to meddle with the changing of the lawes and gouernment, or to disobey the orders of the rule or gouernment, which a man doth finde alreadie established.

That common wealths or gouernments are not most commonly simple, but mixt.

CHAP. 6.

NOwe although the gouernments of Common-wealths be thus deuided into three, and cutting each into two, so into fiue: yet you must not take that ye shall finde any cõmon-wealth or gouernment simple, pure, and absolute in his sort and kind, but as wise men haue deuided for vnderstandings sake, and fantasied foure simple bodies which they cal elements: as fire, ayre, water, earth, and in a mans body foure complexions or temperatures, as cholericke, sanguine, phlegmatique and melancholick: not that ye shall finde one vtterly perfect without mixtion of the other, for that nature almost will not suffer: but vnderstanding doth

discerne each nature as in his sincerities: so seldome or neuer shall you find common-wealths or gouernment, which is absolutely and sincerely made of any of them aboue named, but alwaies mixed with another, & hath the name of that which is more, and ouer-ruleth the other alwaies or for the most part.

The definition of a King, and of a Tyrant.

CHAP. 7.

Where one person beareth ỹ rule, they define that to be the state of a King, who by succession or election, commeth with the good will of the people, to that gouernment, and doth administer the Common-wealth by the lawes of the same, and by equity, & doth seeke the profit of the people as much as his own. A Tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise & consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe, his faction and kindred. These definitions do containe three differences: the obtaining of the authoritie, the manner of administration thereof, and the Butte or marke whereunto it doth tende and shote. So as one may be a tyrant by his entry and getting of the gouernment, and a king in the administration thereof. As a man may thinke of Octauius, and peraduenture of Sylla. For they both comming by tyrannie and violence to that state, did seeme to trauaile very much for the better order of the common-wealth: howbeit, either of them after a diuers maner. Another may be a king by entry, and a tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to thẽ by succession,

Rex.

Tyrannus.

but

but their administration was vtterly tirannical, of Nero after fiue yeares, of Domitian and Commodus veris shortly vpon their new honor. Some both in the comming to their Empire, and in the But which they shote at, be kings, but the manner of their ruling is tyrannicall: as many Emperors after Cæsar & Octauius, and many Popes of Rome. The Emperors claime this tyrannicall power by pretence of that Rogation or *Plebiscitum*, which Caius Cæsar or Octauius obtained, by which all the people of Rome did conferre their power and authority vnto Cæsar wholy.

The Pope groundeth his from Christ (*cui omnes potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the generall Councels make strike with him, to make the Popes power either *Aristocratian*, or at the least *legitimum regnū*, and would faine bridle that *absolutam potestatem*. Some men do iudge the same of the Kinges of Fraunce and certaine Princes of Italy and other places, because they make & abrogate lawes and edicts, lay on tributes and impositions of their owne will, or by the priuate counsell & aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the worde *Populus* doth signifie, the whole body, and the three estates of the common-wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, frō the lawfull and regulate raigne, to the absolute and tyrannical power and gouernment. He himselfe was wont to glorie and say, he had brought the crowne of Fraunce, *hors de page*, as one would say, out of wardship.

Of the absolute king.

CHAP. 8.

OTher doe call that kinde of administration which the Greekes doe cal παμβασιλείαν, not tyrannie, but the absolute

abſolute power of a king, which they woulde pretend that euery king hath, if hee would vſe the ſame. The other they call βασιλείαν νόμιμον, or the royall power, regulate by lawes: of this I will not diſpute at this time. But as ſuch abſolute adminiſtration in time of warre when all is in armes, and when lawes hold their peace becauſe they cannot be heard, is moſt neceſſarie: ſo in time of peace the ſame is very dangerous, as well to him that doth vſe it, and much more to the people vpon whom it is vſed: whereof the cauſe is the frailtie of mans nature, which (as Plato ſaith) cannot abide or beare long that abſolute and vncontrolled authoritie, without ſwelling into too much pride and inſolencie. And therefore the Romanes did wiſely, who woulde not ſuffer any man to keepe the Dictatorſhip aboue ſixe moneths, becauſe the Dictators (for that time) had this abſolute power, which ſome Greekes named a lawfull tyrannie for a time. As I remember, Ariſtotle, (who of all writers hath moſt abſolutely & methodically treated of the diuiſion and natures of common-wealthes) maketh this ſort of gouernment to be one kinde of kinges. But all commeth to one effect: for at the firſt all kings ruled abſolutely, as they who were either the heads and moſt ancient of their families, deriued out of their owne bodies, as Adam, Noa, Abraham, Iacob, Eſau, reigning abſolutely ouer their owne children and bondmen, as reaſon was: or elſe in the rude worlde amongſt barbarous and ignorant people, ſome one then who God had endued with ſinguler wiſedome to inuent things neceſſarie for the nouriſhment and defence of the multitude, and to adminiſter iuſtice, did ſo farre excell other, that all the reſt were but beaſtes in compariſon of him: and for that excellencie, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead, and almoſt when he was yet liuing, was taken for

a God, of others for a Prophet. Such among the Iews were Moses, Iosua, and the other Iudges, as Samuel, &c. Romulus and Numa amongst the Romaines, Lycurgus and Solon, and diuers other among the Greeks, Zamolxis among the Thracians, Mahomet among the Arabians: And this kind of rule among the Greekes is called Τύραννις which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent & proud, vniust, and not regarding the common-wealth, committed such acts as were horrible & odious: as, killing men without cause, abusing their wiues and daughters, taking and spoiling all mens goods at their pleasures, and were not shepheards as they ought to bs, but rather robbers & deuourers of the people, whereof some were contemners of God, as Dionisius, otherwhile they liued like deuils, and would yet be adored and accounted for Gods: as Caius Caligula, & Domitian: that kind of administration, and maner also, at the first not euill, hath taken the signification & definition of the vice of the abusers, so that now both in Greeke, Latine, and English, a tyrant is counted he, who is an euill king, and who hath no regard to the wealth of his people, but seeketh only to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right, or of the law: because that for the most part, they who haue had that absolute power, haue beene such.

Of the name of King, and the administration of England.

CHAP. 9.

That which we call in one sillable King in English, the old Englishmen, & the Saxons, from whom our

tongue is deriued, to this day call in two sillables, cyning, which whether it commeth of cen or ken, which betokeneth to know and vnderstand, or can, which betokeneth to be able, or to haue power, I cannot tell. The participle absolute of the one we vse yet, as when we say, a cunning man, *Vir prudens, aut sciens:* the verbs of the other, as I can doe this, *possum hoc facere*. By olde and ancient Histories that I haue reade, I doe not vnderstand that our Nation hath vsed any other generall authority in this Realme, neither *Aristocraticall* nor *Democraticall*, but onely the royall and kingly maiestie which at the first was deuided into many and sundrie kings, each absolutely raigning in his Country, not vnder the subiection of other, till by fighting the one with the other, the ouercommed alwaies falling to the augmentation of the vanquisher and ouercommer: at the last the Realme of England grew into one Monarchy. Neither any one of those Kings, neither he who first had all, toke any inuestiture at the hands of the Emperour of Rome, or of any other superiour or foraine Prince, but held of God to himselfe, and by his sword, his people, and crowne, acknowledging no Prince in earth his superiour, and so it is kept and holden at this day. Although King Iohn (by the rebellion of the Nobility, ayded with the Doulphin of France his power) to appease the Pope, who at that time possessing the consciences of his subiects, was then also his enemy, and his most grieuous torment (as some Histories doe witnes) did resigne the crowne to his Legate Pandulphus, and toke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yerely. But that act being neither approued by his people, nor established by act of Parliament, was forth-with, and euer sithens taken for nothing, either to binde the King, his successors, or subiects.

What

What is a Common-wealth, and the parties thereof.

CHAP. 10.

TO be better vnderſtoode hereafter, it is neceſſary yet to make a third deuiſion of the cõmon-wealth by the parts thereof. A common-wealth is called a ſociety or common doing of a multitude of frée men, collected together, and vnited by common accord and couenants among themſelues, for the conſeruation of themſelues as well in peace as in war. For properly an hoaſt of men is not called a common-wealth, but abuſiuely, becauſe they are collected but for a time, & for a fact: which done, each deuideth himſelfe from others as they were before. And if one man had, as ſome of the old Romanes had (if it be true that is written) fiue thouſand, or ten thouſand bondmen whom he ruled well, though they dwelled all in one City, or were diſtributed into diuers villages, yet that were no common-wealth: for the bondman hath no communion with his maiſter, the wealth of the Lord is only ſought for, & not the profit of the ſlaue or bondman. For as they who write of theſe things haue defined, a bondman or ſlaue as it were (ſauing life and humane reaſon) but the inſtruments of his Lord, as the axe, the ſawe, the chiſſill and gowge is of the Carpenter. Truth it is, the Carpenter loketh diligently to ſaue, correct, and amend all theſe: but it is for his owne profit, and in conſideration of himſelfe, not for the inſtruments ſake. And as theſe be inſtruments of the Carpenter, ſo the plow, the cart, the horſe, oxe, or aſſe, be inſtruments of the huſbandman: and though one huſbandman had a great number of all theſe, and loked well to them, it made no common-wealth, nor could not ſo be called. For the priuate wealth of the huſ-

Reſpublica.

bandman is onely regarded, and there is no mutuall ſociety or portion, no law or pleading betwéene the one and the other. And (as he ſayth) what reaſon hath the pot to ſay to the Potter, why madeſt thou me thus? or why doeſt thou breake me after thou haſt made me? euen ſo is the bondman or ſlaue which is bought for money: for he is but a reaſonable and liuing inſtrument, the poſſeſſion of his Lord and Maiſter, reckoned among his goods, not otherwiſe admitted to the ſociety ciuill, or Common-wealth, but is part of the poſſeſſion and goods of his Lord. Wherefore, except there be other orders and adminiſtrations amongſt the Turks, if the Prince of the Turks (as it is written of him) doe repute all other his bondmen and ſlaues (himſelfe and his ſonnes onely frée-men) a man may doubt whether his adminiſtration be to be accounted a cõmon-wealth, or a kingdome, or he rather to be reputed onely as one that hath vnder him an infinite number of ſlaues or bondmen, among whom there is no right, law, nor common wealth compact, but onely the will of the Lorde and ſegnior. Surely none of the old Grækes would call this faſhion of gouernment, *Kemp*, or Πολιτεία for the reaſons which I haue declared before.

The firſt ſort, or beginning of an houſe or Family, called οἰκονομία.

CHAP. 11.

THen if this be a ſociety, and conſiſteth only of frée-men, the leaſt part thereof muſt be two. The naturalleſt, and firſt coniunction of two, toward the making of a further ſociety of continuance, is of the huſband and of the wife, after a diuers ſort, each hauing care of the family the man to get, to trauaile a-broad,

broad, to defend: the wife, to saue that which is gotten, to tarry at home, to distribute that which cõmeth of the husbands labour, for the nurtriture of the children, & family of them both, and to kepe all at home neate, and cleane. So nature hath forged each part to his office: the man sterne, strong, bold, aduenturous, negligent of his beauty, & spending. The woman weake, fearefull, faire, curious of her beauty, and sauing. Either of them excelling other in wit & wisdom, to conduct those things which appertaine to their office, and therefore where their wisedom doth excell, therein it is reason that each should gouerne. And without this society of man and woman, the kind of man could not long endure. And to this society men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another, and so to liue in couple, than to adhere himselfe with many. Although of all things, or liuing creatures, a man doth shew himselfe most politique, yet can he not well liue without the society and felowship ciuill. He that can liue alone, saith Aristotle, is either a wild beast in a mans likenes, or else a God rather than a man. So in the house and family is the first and most naturall (but priuate) apparance of one of the best kinds of a common-wealth, that is called Aristocratia, where a fewe, and the best doe gouerne, and where not one alwaies: but sometime, & in some thing one, and somtime, and in some thing another doth beare the rule. Which to maintaine for his part, God hath giuen to the man great wit, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to the woman beauty, faire countenance, and sweete words, to make the man to obay her againe, for loue. Thus each obayeth and commaundeth other, and they two together ruleth ỹ house. The house I call here Domus, seu familia.

the man, the woman, their children, their seruants bond and free, their cattle, their houshold-stuffe, and all other thinges which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Metaphorice, for it is but an house, and a little sparke resembling as it were that gouernment.

The first and naturall beginning of a kingdome in Greeke βασιλεία.

CHAP. 12.

BVt for so much as it is the nature of all thinges to encrease or decrease: this house thus encreasing and multiplying by generation, so that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser, and therevpon naturally desirous to rule, the father & mother sendeth them out in couples as it were by prouining or propagation. And the child by mariage beginneth as it were to rote towards the making of a new stocke, and therevpon another house or family. So by this propagation or prouinig first of one, and then another, and so from one to another, in space of time, of many houses was made a streete or village: of many streetes and villages ioyned together, a Citty or Borough. And when many Citties, Boroughs, and Villages, were by common and mutuall consent for their conseruation ruled by that one and first father of them all, it was called a Nation or Kingdom. And this seemeth the first and most naturall beginning and source of Citties, Townes, Nations, Kingdoms, and of all ciuill societies. For so long as the great grandfather was alue and able to rule, it was vnnaturall for any of his sonnes or off-spring to striue with

Prouining, or propagation, is when a man layeth a branch of a Vine or Osier, or any other tree into the ground, so that it taketh roote of it selfe, & may liue though it be cutte cleane from the first root or stock.

Pagus.
Oppidum.
Ciuitas.
Regnum.

with him for the superiority, or to goe about to governe, or any wise to dishonour him, from whom he had receaued life and being. And therefore such a one doth beare the first and naturall example of an absolute and perfect King. For he loued them as his own children and Nephewes, cared for them as members of his owne body, prouided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose body they came, obayed him for his great wisedome and fore-cast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods own mouth. Yea againe vsed nouriture: for each paine put vpon them, he esteemed as laid vpon himselfe.

The first and naturall beginning of the rule of a few of the best men, called in Greeke Ἀριστοκρατία.

CHAP. 13.

BVt when that great Graundfather was dead, the sonnes of him, and brethren among themselues, not hauing that reuerence to any, nor confidence of wisedome in any one of them, nor that trust the one to the other, betweene whom (as many times it fareth with brethren) some strifes and brawlings had before arisen: To defend themselues yet from them which were Welch and strangers, necessarily agreed among themselues to consult in common, and to beare rule for a time in order, now one, now another: so that no one might beare alwaies the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being eyther wiser of himselfe, or else by his brothers error and fault) amended it. And in the meane while, at diuers & most times when

when vrgent necessity did occurre, they consulted all those heads of families together within themselues, howe to demeane and order their matters best for the conseruation of themselues, and each of their families generally and particularly. Thus a few, being heads, and the chiefe of their families, equall in birth and nobility, and not much different in ritches, gouerned their owne houses, and the descendants of them particularly, and consulted in common vpon publique causes, agreeing also vppon certaine lawes and orders to be kept amongst them. So the best, chiefest, and sagest did rule, and the other part had no cause to striue with them, nor had no cause nor apparance to compare with anie of them, neyther for age nor discretion, nor for ritches or nobility. The rulers sought each to keepe and maintaine their posterity, as their sonnes and Nephews, and such as should succeede them, and carry their names when they were dead, and so render them being mortall by nature, immortall by their fame and succession of posterity: hauing most earnest care to maintaine still this their cousinage and common family as wel against forraigne and barbarous Nations, which were not of their progenie, tongue, or Religion, as against wilde and sauage beasts. This seemeth the naturall sourse, and beginning or image of that rule of the fewer number, which is called of the Greekes Ἀριστοκρατία, and of the Latines *optimatum republica.*

The first originall, or beginning of the rule of the multitude called πολιτείαν or Δημοκρατία.

CHAP. 14.

NOw, as time bringeth an end of all thinges, these brethren being all dead, and their offspring increasing

ſing daily to a great multitude, and the reuerence due to the old fathers in ſuch and ſo great numbor of equals fayling by the reaſon of the death or doting of the Elders: each owing their merites of education a part to their Fathers and Grandfathers, and ſo many ariſing, and ſuch equalities among thē, it was not poſſible that they ſhould be content to be gouerned by a fewe. For two things being ſuch as for the which men in ſocietie and league doe moſt ſtriue, that is, honour and profit, no man of free courage can be contented to be neglected therein, ſo that they were faine of neceſſitie to come to that, that the more part ſhould beare the price away in election of Magiſtrates and Rulers. So that eyther by courſe or by lot, each man in turne might be receiued to beare rule, and haue his part of the honor: and (if anie were) of the profite which came by adminiſtration of the common-wealth. For whoſoeuer came of that olde great Grandfathers race, he accounted himſelfe as good of birth as any other. For ſeruice to the cōmon-wealth, all, or ſuch a number had done it, as they coulde not be accounted few. And if a few would take vpon them to vſurpe ouer the reſt, the reſt conſpiring together would ſone be Maiſters of them, and ruinate them wholie. Whereupon neceſſarilie it came to paſſe, that the common-wealth muſt turne and alter as before from one to a few, ſo now from a few, to many and the moſt part, each of theſe yet willing to ſaue the politicke bodie, to conſerue the authoritie of their nation, to defend themſelues againſt all other, their ſtrife being onely for empire and rule, and who ſhould do beſt for the common-wealth, whereof they would haue experience made by bearing office and beeing Magiſtrates. This I take for the firſt and naturall beginning of the rule of the multitude, which the Grecians called Δημοκρατία: the Latines, ſome *Reſpublica* by the generall name, ſome *Po-*

puli potestas, some *sensus potestas*, I cannot tell howe latinely.

That the common-wealth or policie, must be according to the nature of the people.

CHAP. 15.

By this processe and discourse it dooth appeare that the mutations & changes of fashions of gouernmēt in common-wealths be naturall, & doo not alwaies come of ambition or malice: And that according to the nature of the people, so the cōmonwealth is to it fit and proper. And as all these iij. kinds of cōmonwealths are naturall; so when to ech party or espece & kind of the people ẏ is applied which best agreeth, like a garment to the bodie or shoe to the foote, then the body politicke is in quiet, & findeth ease, pleasure and profit. But if a contrary forme be giuen to a contrary maner of people, as when the shoe is too little or too great for the foote, it doth hurt and encomber the conuenient vse thereof, so the free people of nature tyrannized or ruled by one against their wils, were he neuer so good, either faile of corage and wexe seruile, or neuer rest vntil they eyther destroy the king and them that would subdue them, or be destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie cannot tell what they should doe, but eyther through insolencie, pride, and idlenesse, will fall to robberie and all mischife, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing. Of both these two wee haue histories inow to beare witnesse, as the Greekes, Romaines, Samnites, Danes, Vandalls, and others. Yet must you not thinke that all common

Græci. Romani. Samnits. Vandali. Dani. Norwegi. Sueti.

common-wealths, administrations and rulings, began on this sort, by prouining or propagation, as is before written: but manie times after a great battaile & long warre, the Captaine who led a multitude of people gathered peraduenture of diuers nations and languages, liking the place which he hath by force conquered, tarieth there, and beginneth a common-wealth after thys maner, and for the most part a kingdom. As the Gothes and Lumbards in Italie, the Frenchmen in Gaule, the Sarasins in Spaine and part of France, the Saxons in great Britaine, which is now called England: of which when that one & chiefe Prince is dead, the nobler sort consult among themselues, and either chose an other head & king, or diuide it into more heads and rulers, so did the Lumbards in Italy, & the Saxons in England: or take at the first a common rule and popular estate, as the Switzers did in their cantons, and doe yet at thys day, or els admit the rule of a certaine fewe, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

The deuision of the parts and persons of the Common-wealth.

CHAP. 16.

TO make all things yet cléere before, as we shall goe, there ariseth another diuision of the partes of the common-wealth. For it is not enough to say that it consisteth of a multitude of houses & families, which make stréets & villages, and the multitude of the stréets and villages make townes, & the multitude of townes the realm, & that frémen be cõsidered only in this behalfe, as subiects and citizens of the common-wealth, and not bondmen, who can beare no rule nor iurisdiction ouer

frǽmen, as they who be taken but as instruments & the goods and possessions of others. In which consideration also we doe reiect women, as those whom nature hath made to kǽp home and to nourish their family and childʒen, and not to meddle with matters abʒoad, noʒ to beare office in a cittie oʒ Cõmon-wealth, no moʒe than childʒen and infants: except it be in such cases as the authoʒitie is annexed to the blode and pʒogenie, as the crowne, a dutchie, oʒ an erledome: foʒ there the blod is respected, not the age noʒ the sexe. Wherby an absolute Quǽne, an absolute Dutches oʒ Countesse, those I call absolute, which haue the name, not by being maried to a king, duke, oʒ erle, but by being the true, right & next successoʒs in the dignitie, and vppon whom by right of the blod that titls is descended: These I say, haue the same authoʒitie although they be women oʒ childʒen in that kingdome, dutchie, oʒ earledome, as they shoulde haue had if they had bǽn men of full age. Foʒ the right and honour of the blood, and the quietnes and suertie of the realme, is moʒe to be cõsidered, than either the tender age as yet impotent to rule, oʒ the sex not accustomed (otherwise) to intermeddle with publick affaires, being by common intendment vnderstod, that such personages neuer do lacke the counsell of such graue and discrǽte men as bee able to supply all other defectes. Thys (as I saide) is not enough: But the diuision of these which bǽ participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second pʒiuate men. Another, the like was among the Romanes of *Patritij* and *plebei*, ỹ one striuing with the other a long time, the *Patritij* many yeres excluding the *Plebei* from bearing rule, vntill at last all magistrates were made common betwǽne them: yet was there another diuision of the Romans, into *Senatores, equites*, and

plebs,

plebs: the Greeks had also ἀριστοι καὶ δημοτικοί. The French haue also at this day, les nobles, & la populaire, or gentils homes & villanies: we in England diuide our men commonly into foure sorts, Gentlemen, Cittizens, yeomen, artificers, and labourers. Of Gentlemen the first and chiefe are the King, the prince, dukes, marquises, eales, vicountes, barrons, and these are called κατ' ἐξοχὴν, the nobilitie, and all these are called Lordes and noblemen: nert to these be Knights, Esquires, and simple gentlemen.

Of the first part of Gentlemen of England, called Nobilitas maior.

CHAP. 17.

Nobilities maior.

Eldest sonns of dukes are not earles by birth, but lords, & take theyr place aboue earls, and so are earles eldest sonnes in respect of Barons.

Esquieres of honour, or lordes.

DUkes, marquises, earles, vicounts, and barons, either be created by the Prince, or come to that honor by being the eldest sonns, as highest & nert in succession to their parents. For the eldest of dukes sons during his fathers life is called an earle: an earles son is called by the name of a vicount or Baron, or els according as the creation is. The creation I call the first donation and condition of the honour (giuen by the Prince for good seruice done by him, and aduaunce-ment that the Prince will bestowe vppon him) which with the title of that honour, is commonly (but not alwaies) giuen to him and to his heires, males onelie: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speeche, all Dukes and Marquises sonnes, and the eldest sonne of an Earle be called Lords. The which name commonlie doth agree to none of lower degree then Barons, excepting such onely, as be thereunto by some speciall office called. The Baronny or degree of Lordes, doth

aunſwere to the dignity of the Senators of Rome, and the title of our Nobility to their *patritij*: when *patritij* did betoken *Senatores, aut Senetorum filios*. Cenſus Senatorum was in Rome, at diuers times diuers, & in England no man is created a Baron, except he may diſpend a yearely reuenue one thouſand pounds, or one thouſand marks at the leaſt. Vicounts, Earles, Marqueſſes, and Dukes more, according to the proportion of the degree and honour, but though by chaunce he or his ſonne haue leſſe, he keepeth his degree: but if they decay by exceſſe, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) ſo ſomtimes they are not admitted the vpper houſe in the Parliament, although they keepe the name of Lord ſtill.

Of the ſecond ſort of Gentlemen, which may be called Nobilitas minor, and firſt of Knights.

CHAP. 18.

NO man is a Knight by ſucceſſion, not by the king or Prince. And the name of Prince in England κατ' ἐξοχὴν betokeneth the Kings eldeſt ſonne or Prince of Wales: although the King himſelfe, his eldeſt ſonne, and all Dukes be called by generall name Princes. But as in France the Kings eldeſt ſon hath the tytle of the Doulphin, and he, or the nert heire apparant to the crowne is Monſire, ſo in England the Kings eldeſt ſon is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, eyther before the battaile to encourage them the more to aduenture their liues, or after the conflict, as aduancement for their hardines and manhood already ſhewed: or out of the warre for ſome great ſeruice done, or ſome good hope through the vertues which doe appeare in them. And they are made

made either by the King himselfe, or by his commission and royall authority giuen for the same purpose, or by his Lieutenant in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to answere in part to that which the Romaines called *Equites Romanos*, differing in some points, and agreeing in other, as their common-wealth and ours doe differ and agree: for neuer in all points one common-wealth doth agree with another, no, nor long time any one common-wealth with it selfe. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersity of times doe present occasion, and the mutability of mens wits doth inuent and assay new waies, to reforme and amend that wherin they doe finde fault. *Equites Romani*, were chosen *ex censu*, that is, according to their substance and ritches. So be Knights in England most commonly, according to the yerely reuenue of their lands, being able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur Equites*. No more are all made Knights in England that may dispend a Knights land or fee, but they onely whom the King will so honour. The number of *Equites* was vncertaine, and so it is of Knights, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knights of England haue not so, but finde their owne horse themselues in peace time, and most vsually in warres.

Census Equester was among the Romanes at diuers times of diuers value: but in England whosoeuer may dispende of his free landes fourty poundes starling of yerely reuenue, by an olde lawe of England, eyther at the coronation of the King, or mariage of his daughter, or at the dubbing of the Prince Knight, or some such great occasion, may be by the King compelled to take that order and honour, or to pay a fine, which many not

so

so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour and yet haue abilitie, neither be made knights, though they would, and yet pay the fine of xl.li. sterling at that time whē this order began, which maketh now Cxx.li. of currant mony of England: as I haue more at large declared in my booke of the diuersity of standards, or the valor of monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites* and *Plebem*: so when we in England doe say the Lordes and the Commons: the knights, esquires, & other Gentlemen, with citizens, burgesses & yeomen, be accounted to make the Commons. In ordaining of lawes, the Senat of lordes of England is one house, where the Archbishoppes and Bishoppes also be, and the king or quæne for the time being as chiefe, the knights and all the rest of the Gentlemen, Cittizens and Burgesses which be admitted to consult vpon the greatest affaires of the Realme, be in another house by themselues, and that is called ỹ house of the Commons, as wee shall more clærelie describe when wee speake of the Parlement. Whereupon this word knight is derined, and whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might be moued as a question. The worde souldier now seemeth rather to come of sould & paiment, and more to betoken a waged or hired man to fight, thā otherwise, yet Cæsar in his cōmentaries called soldures in the tongue gallois, men who deuoted & swore themselues in a certaine band or othe one to another, and to the Captaine: which order if the Almains did follow, it may be that they who were not hired, but beeing of the Nation, vppon their owne charges, and for their aduaunce-

uanncement, and by ſuch common oath or band that did follow ỹ wars, were (poſſibly) κατ' ἐξοχὴν, called knights or milites, and now among the Almaines ſome are called Lanceknights, or ſouldiers of their band not hyred, although at this day they be for ỹ moſt part hirelings. Or peraduenture it may be that they which were next about the Prince, as his guard and ſeruaunts, picked or choſen men out of ỹ reſt, being called in the Almaine language knighten, which is as much to ſay as ſeruaunts: theſe men being found of good ſeruice, the word afterward was taken for an honour, & for him who maketh profeſſion of armes. Our language is ſo changed, that I dare make no iudgement thereof. Now we call him knight in Engliſh, that the French calleth Cheualier, and the Latine *equitem*, or *equeſtris ordinis*.

And when any man is made a knight, he kneeling downe, is ſtroken of the Prince, with his ſword naked, vpon the back or ſhoulder, the prince ſaying, ſus or ſois chiualier au nom de Dieu, and (in times paſt) they added S. George, and at his ariſing the prince ſaith auaũcer. This is the manner of dubbing of knights at thys preſent: and that terme dubbing, was the old terme in this point, & not creation. At the coronation of a king or quéene, there be knights of ỹ bath made, with long and more curious ceremonies. Knights bãnerets are made in the fielde, with the ceremonie of cutting of the point of his ſtandert, & making it as it were a banner: he being before a bacheler knight, is now of a higher degrée, allowed to diſplay his armes in a banner as Barons do. But this order is almoſt grown out of vſe in England. But howſoeuer one be dubbed or made a knight, his wife is by and by called a Ladie, as well as a Barons wife: he himſelfe is not called Lorde, but hath to his name in cõmon appellation added this ſillable, Sir, as if he before were named Thomas, William, Iohn, or Richard,

chard, afterward he is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to knights in England. This may ſuffice at this time, to declare the order of knighthood, yet there is another order of knights in England, which be called the knights of the Garter. King Edward ỹ third, after he had obtained many notable victories, king Iohn of Fraunce, king Iames of Scotland, beeing both priſoners in the tower of London at one time, & king Henrie of Caſtile the baſtard expulſed out of his realme, & Don Petro reſtored vnto it by the prince of Wales and duke of Aquitaine called the black Prince, inuented a ſocietie of honour, and made a choice out of his owne realme and dominions, and all Chriſtendome: and the beſt and moſt excellent renowmed perſons in vertues and honour, hee did adorne with that title to be knights of his order, gaue them a garter decked with gold, pearle, and precious ſtones, with the buckle of gold, to weare daily on the left leg onely: a kirtle, gowne, cloke, chaperon, collar, and other auguſt & magnificall apparell both of ſtuffe and faſhion exquiſite and heroicall, to weare at high feaſtes, as to ſo high and princely an order was méete: of which order he and his ſucceſſors kinges and queenes of England to be the ſoueraigne, and the reſt by certaine ſtatutes and lawes among themſelues, be taken as brethren and fellowes in that order, to the number of xxvi. But becauſe this is rather an ornament of the Realme, then any policie or gouernment thereof, I leaue to ſpeake any further of it.

Of Eſquires.

CHAP. 19.

Eſcuier or eſquier (which we call commonly ſquire) is a French worde, and betokeneth *Scutigerum*, or *Armigerum*

Armigerum, and be all those which beare armes (as we call them) or armories (as they terme thē in French) which to beare is a testimonie of the nobilitie or race from whence they doe come. These be taken for no distinct order of the Common-wealth, but do goe with the residue of the Gentlemen: saue that (as I take it) they bee those who beare armes, testimoniss (as I haue said) of their race, and therefore haue neither creation nor dubbing: or els they were at the first costerels or the bearers of the armes of lords or knights, and by that had their name for a dignity and honor giuen to distinguish them from a common souldier called in Latine, *Gregarius miles*.

Of Gentlemen.

CHAP. 20.

GEntlemen be those whom their blood & race doth make noble & knowne, Εὐμενεῖς in Greeke the Latines call thē all *Nobiles*, as the French Nobles, Εὐμένεια or *Nobilitas* in Latine is defined, honor or title giuen, for that the ancestors hath bēn notable in riches or vertues, or (in fewer words) old riches or prowes remaining in one stock. Which if the successors do kēp & follow, they be *verè nobiles*, and Εὐμενεῖς: if they do not, yet the fame and wealth of their ancestors serue to couer thē so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologie of the name serued the efficacie of the worde. *Gens* in Latine betokeneth the race and surname, so the Romanes had Cornelios, Sergios, Appios, Fabios, Æmilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name were also Gentiles, and remaining the

memorie of the glory of their progenitors fame, were Gentlemen of that or that race. This matter made a great strife among the Romans, when those which were noui homines, were more allowed, for their vertues new and newly shewen, than the old smel of auncient race newly defaced by the cowardise and euil life of their nephews and discendents could make the other to be. Thus the Cicerones, Catones, and Marij, had much a doe with those auncients, and therefore sayde Iuuenalis:

Malo pater tibi sit Therſites, dummodo tu ſis
Æacidi ſimilis vulcaniaque arma capeſſas,
Quàm te Therſiti ſimilem producat Achilles.

But as other Common-wealths were faine to doe, so must all Princes necessarily follow: that is, where vertue is, to honour it. And although vertue of auncient race be easier to be obtained, aswel by the example of the progenitors, which encourageth, as also through habilitie of education and bringing vp, which enableth, and the lastly enraced loue of tenants and neighbors to such noble men and gentlemen, of whom they hold, and by whom they doe dwel, which pricketh forward to ensue in their fathers steps. So if all this doe faile (as it were great pittie it should) yet such is the nature of all humane thinges, and so the world is subiect to mutabilitie, that it doth many times faile: but when it doth, the Prince and common-wealth haue the same power that their predecessors had, and as the husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth finde it, to make gentlemen, esquires, knights, barons, earls, marquises and dukes, where he seth vertue able to beare that honor or merits, and deserues it, and so it hath alwaies been vsed among vs. But ordinarily the K. doth only make knights, & create barons, or higher degrees:

for

for as for gentlemen, they be made good cheape in England. For whosoeuer studieth the lawes of the Realm, who studieth in the Vniuersities, who professeth liberall Sciences: and to be short, who can liue idely, and without manuall labour, and will beare the port, charge and countenance of a Gentleman, he shal be called master, for that is the title which men giue to Esquires and other Gentlemen, and shall be taken for a Gentleman. For true it is with vs as is said, *Tanti eris alijs, quanti tibi feceris:* And (if néede be) a King of Heraulds shall also giue him for money armes newly made and inuented, the title whereof shall pretend to haue béene found by the said Herauld in perusing and viewing of olde Registers, where his auncestors in times past had béene recorded to beare the same. Or if hee will doe it more truly, and of better faith, he will write that for the merrites of that man, and certaine qualities which he doth sée in him, and for sundry noble acts which he hath performed, he by the authority which he hath, as King of Heraulds and Armes: giueth to him his heires these and these Armes: which being done, I think he may be called a Squire, for he beareth euer after those Armes. Such men are called somtime in stone, Gentlemen of the first head.

Whether the maner of England in making Gentlemen so easily, is to be alowed.

CHAP. 21.

A Man may make doubt e question, whether this maner of making Gentlemen is to be alowed or no, and for my part I am of that opinion, that it is not amisse. For first the Prince loseth nothing by it, as he should doe if it were as in France: for the

yeoman or husbandman is no more subiect to taile or taxe in England than the Gentleman: no, in euery paiment to the king the gentleman is more charged, which he beareth the gladlier, and dareth not gaine-say, for to saue and keepe his honour and reputation. In any shew or muster, or other particuler charge of the town where he is, he must open his purser wider, & augment his portion aboue others, or else he doth diminish his reputation. As for their outward shew, a Gentleman (if he wil be so accounted) must goe like a Gentleman, a Yeoman like a Yeoman, and a Rascall like a Rascall: and if he be called to the warres, he must and will (whatsoeuer it cost him) aray himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, & bountifuller liberality than others, and keepe about him idle seruaunts, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policy and gouernement of the Common-wealth, it is not those that haue to doe with it which will magnifie themselues, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tried and well knowne, as shall be declared hereafter.

Of Cittizens and Burgesses.

CHAP. 22.

NExt Gentlemen be appointed Cittizens & Burgesses, such as not only be free, & receaued as officers within the Cities, but also be of some substance to beare the charges. But these Cittizens and

and Burgeſſes, be to ſerue the common-wealth, in their Citties & Burrowes, or in corporate townes where they dwell. Generally in the ſhires they be of none account, ſaue only in the cõmon aſſembly of the Realm to make lawes, which is called the Parliament. The ancient Citties appoint foure, & each borrow two, to haue voyces in it, and to giue their conſent or diſſent, in the name of the Citty or burrowe for which they be appointed.

Of Yeomen.

CHAP. 23.

THoſe whom we call yeomen, next vnto the nobility, Knights & Squires, haue the greateſt charge and doings in the common-wealth, or rather are more trauelled to ſerue in it than all the reſt: as ſhall appeare hereafter. I call him a yeoman whom our lawes doe call *Legilem hominem*, a word familier in Writs and Enqueſts, which is a free man borne Engliſh, and may diſpend of his owne free land in yearely reuenue to the ſumme of xl. s. ſterling. This maketh (if the iuſt value were taken now to the proportion of monies) vi. li. of our currant money at this preſent. This ſort of people confeſſe themſelues to be no Gentlemen, but giue the honour to all which be or take vpon them to be Gentlemen, and yet they haue a certain preheminence and more eſtimation than labourers and artificers, and commonly liue wealthily, keepe good houſes, and doe their buſines, & trauaile to acquire ritches: theſe be (for the moſt part) farmours vnto Gentlemen, which with grazing, frequenting of markets, and keeping ſeruants not idle as the Gentleman doth, but ſuch as get both their own liuing and part of their maiſters, and by theſe meanes doe come to ſuch wealth, that they are able and daily doe buy the lands of vnthrifty Gentlemen,

tlemen, and after setting their sonnes to the schoole at the Uniuersities, to the lawes of the Realme, or otherwise leauing them sufficient lands whereon they may liue without labour, doe make their said sonnes by those meanes Gentlemen: These be not called maisters, for that (as I said) pertaineth to Gentlemen only. But to their surnames men adde Goodman: as if the surname be Luter, Finch, White, Browne, they are called goodman Luter, goodman Finch, goodman White, goodman Brown, amongst their neighbours, I meane not in matters of importance, or in law. But in matters of law and for distinction, if one were a Knight, they would write him (for examples sake) Sir Iohn Finch Knight, so if he be an Esquire, Iohn Finch Esquire or Gentleman, if he be no Gentleman, Iohn Finch yeoman. For amongst the Gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, be written Esquires. So amongst the husbandmen, labourers, lowest and rascall sort of the people, such as be exempted out of the number of the rascability of the popular, be called and written yeomen, as in the degree next vnto Gentlemen. These are they which old Cato calleth *Aratores*, and *optimos ciues in Republica*, and such as of whom the writers of common-wealths praise to haue many in it. Aristotle namely reciteth μόσθακας μεσοπτίαιμα: these tend their own busines, come not to medle in publike matters and iudgments: but when they are called, and glad when they are deliuered therof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labor, as men vsed to fight for their Lords of whom they hold their lands, for their wiues and children, for their Country and Nation, for praise and honour against they come home, and to haue the loue of their Lorde and his Children, to be continued towardes them and their children, which

haue

haue aduentured their liues to and with him and his. These are they which in the old worlde gate that honor to England, not that either for wit, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so many in number, so obedient at the Lordes call, so strong of bodie, so hard to endure paine, so couragious to aduenture with their Lord or Captaine, going with, or before them, for else they be not hable nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraide all Fraunce, that woulde rather die all, than once abandon the knight or gentleman their Captaine, who at those daies commonlie was their Lorde, and whose tennants they were, readie (besides perpetuall shame) to bee in danger of vndoing of themselues, and all theirs, if they should shewe any signe of cowardise, or abandon the lord, knight or gentleman of whom they helde their liuing. And this they haue amongest them from their forefathers, told one to another. The gentlemen of Fraunce, and the yeomen of England, are renowned, because in battaile of horsemen, Fraunce was many times too good for vs, as wee againe alway for them on foote. And gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on foote: how-soeuer it was, yet the gentlemen had alwayes the conduction of the yeomen, and as their captaines were either a foote or vppon a little nagge with them, and the kings of England in foughten battailes remaining alwaies among the footemen, as the French kings among their horsemen. Eche Prince thereby, as a man may gesse, did shewe where hee thought his strength did consist. What a yeoman is I haue declared, but from whence the worde is deriued it is hard to say: it cannot be thought that yeoman shoulde be sayde

Geman in the Saxon is a married man, and hereof commeth our yeoman, for

after marriage men are accounted setled members in the common-wealth, but not before.

A yonker commeth of yong heire which is a sonne and heire to a gentleman or a young gentleman.

a young man, for commonlie we do not call any a yeoman till he be married, and haue chyldren, and as it were, haue some authoritie among his neighbours. Yonker in low Duch betokeneth a meane gentleman, or a gay fellow. Possible our yeomen not being so bold as to name themselues Gentlemen, when they came home, were content when they had learde by frequentation with lowe Dutchmen, of some small gentleman (but yet that would be counted so) to be called amongst them, yonker man, they calling so in warres by mockage or in sport the one another, when they came home, yonker man, and so yeoman: which word now signifieth among vs, a man well at ease, and hauing honestlie to liue, and yet not a Gentleman: what soeuer that word yonker man, yonke man, or yeoman doth more or lesse signifie to the Dutchmen.

Of the fourth sort of men which doe not rule.

CHAP. 23.

THe fourth sort or classe amongst vs, is of these which the old Romans called *capite sensis proletarij* or *operæ*, day labourers, poore hus bandmen, yea merchants, or retailers which haue no free land, copiholders, & all artificers, as Taylers, Shoomakers, Carpenters, Brickmakers, Bricklayers, Masons, &c. These haue no voyce nor authoritie in our Common-wealth, and no account is made of them, but onelie to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities & corporate townes for default of yeomen, enquests and Iuries are impaneled of such maner of people. And in Villages they be commonlie made Churchwardens, Alecunners, and many

manie times Constables, which office toucheth more the Common-wealth, and at the first was not imploied vpon such low and base persons. Wherefore generally to speake of the Common-wealth, or policie of England, it is gouerned, administred, and manured by three sorts of persons, the Prince, Monarch, and heade Gouernour, which is called the King, or if the crowne fall to a woman, the Quæne absolute, as I haue heretofore said: In whose name and by whose authority all things are administred. The gentlemen, which be deuided into two parts, the Baronie or estate of Lordes contayning Barons and all that be aboue the degrée of a Baron, (as I haue declared before:) and those which bee no Lordes, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the yeomanrie: Each of these hath his part and administration in iudgements, corrections of defaults, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter.

THE SECOND BOOKE.

The deuision and definition of the Lawes of this Realme in generall.

CHAP. 1.

The lawes of England consist in two poynts, { Judgement and Practise.

In Judgement are considered the { Persons. Place. Matter, and Maner.

The Persons in iudgement are the { Iudges in the Courtes. Sergeants and counsellers.

In practise are considered the { Persons, and their Office.

The persons are { Protonotharies. Sollicitors, and Atturneis.

Their office is to prepare the matter, and to make it readie for the Iudges to determine.

The Protonothories are the Clerkes in the Court, which doe record the matters hanging in iudgement, and doe frame the pleading, enter the rules and orders of the Court, the verdites and iudgements giuen in the same.

Solici-

Solicitors are such, as being learned in the Lawes, and informed of their maisters cause, doe informe and instruct the Counsellers in the same.

Atturneis are such as by experience haue learned, and do know the orders and manner of proceding, in euerie court where they serue, & doe purchase out writs and processe belonging to their Clients cause. They see to his suites, that hee bee not hindered by negligence. They pay the fées belonging to the Courtes, and prepare the cause for iudgement.

The places for iudgement are the courts where sentence is giuen, & the lawes made: as, the Parlement, Chauncerie, Kings-bench, the Common-pleas, the Exchequer, the Court of Wards, the Star-chamber, the Court of Requests, & the Duchie Court of Lancaster.

The matter of the Law is { Iustice, and Equitie.

The manner of their seuerall procedings, followeth.

Of the Parlement, and the authoritie thereof.

CHAP. 2.

THe most high and absolute power of the Realme of England consisteth in the Parlement. For as in warre, where the king himselfe in person, the Nobility, the rest of the gentilitie, & the yeomanrie are, is the force and power of England: So in peace and consultation where the prince is to giue life: and the last and highest commandement, the Barronie for the Nobilitie and higher: the knights, esquires, gentlemen and commons for the lower part of the Commonwealth, the bishops for ỹ clergie be present to aduertise,

consult and shew what is good & necessarie for the common-wealth, and to consult together, and vpon mature deliberation, euerie bill or lawe being thrise read and disputed vpon in either house, the other two parts, first each a part, and after the Prince himselfe in presence of both the parties, doth consent vnto and alloweth. That is the Princes and whole Realmes deede: whereupon insilie no man can complaine, but must accomodate himselfe to finde it good, and obey it.

That which is doone by this consent is called firme, stable and *sanctum*, and is taken for lawe. The Parlement abrogateth olde lawes, maketh newe, giueth order for things past, and for things hereafter to be followed, changeth rights and possessions of priuate men, legitimateth bastards, establisheth formes of religion, altereth waights and measures, giueth formes of succession to the Crowne, defineth of doubtfull rights, whereof is no law alreadie made, appointeth subsidies, tailes, taxes, and impositions, giueth most frē pardons and absolutions, restoreth in bloode and name, as the highest court, condemneth or absolueth them whom the Prince will put to that triall. And to be short, all that euer the people of Rome might do, either in *Centuriatis comitijs*, or *tributis*, the same may be done by the Parlement of England, which representeth, and hath the power of the whole Realme, both the head and the bodie. For euery Englishman is intended to be there present, either in person, or by procuration and atturny, of what preheminence, state, dignitie, or qualitie soeuer he be, from the Prince, (be he King or Quēne) to the lowest person of England. And the consent of the Parlement, is taken to be euerie mans consent.

Alias Tribunitiis.

The Iudges in Parlement are the King or Quēnes Maiestie, the Lordes temporall and spirituall, the Commons representeth by the Knights and Burgesses

of

of euery Shire and Borough towne. These all, or the greater part of them, and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The officers in Parlement are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and Committies.

The speaker is he that doth commend and preferre the bils exhibited into the Parlement, and is the mouth of the Parlement. He is commonlie appointed by the King or Queene, though accepted by the assent of the house.

The Clarkes are the keepers of the Parlement rolles and records, and of the statutes made, and haue the custodie of the priuate statutes not printed.

The Committies are such as either the Lordes in the higher house, or burgesses in the lower house, doe choose to frame the Lawes vppon such bills as are agreed vppon, and afterwarde to be ratified by the saide houses.

The forme of holding the Parlement.

CHAP. 3.

THe Prince sendeth forth his rescrips or writs to euery duke, marques, baron, & euery other Lord tempozall or spirituall who hath voice in the parlement, to be at his great counsell of Parlement such a day (the space from the date of the writte is commonly at the least 40. daies) he sendeth also writs to the Sheriffes.

Sheriffes of euery shire, to admonish the whole shire to chose two knights of the Parlement in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be present at that day: likewise to euery Citty and towne, which of auncienty hath bẽn wont to finde burgesses of the parlement, so to make election, that they might be present there at the first day of the Parlement. The knightes of the shire be chosen by all the gentlemen and yeomen of the shire, present at the day assigned for the election: the voyce of any absent can be counted for none. Yeomen I cal here (as before) that may dispend at the least xl.s. of yerely rent of free land of his own. These meeting at one day, the two who haue the more of theyr voyces, bee chosen knights of the shire for that Parlement: likewise by the pluralitie of ỹ voyces of the citizens and Burgesses, be the burgesses elected. The first day of the Parlement, the Prince and all the Lords in their robes of Parlement do meet in the higher house, where after prayers made, they that bee present are written, and they that be absent vpon sickneſſe, or some other reasonable cause (which the Prince will allow) doe constitute vnder their hand and seale, some one of those who be present, as their procurer, or Atturney, to giue voyce for them, so that by presence or Atturney and proxy they be all there, all the princes and barons, and all archbishops and bishops, and (when Abbots were) so many abbots as had voyce in parlement. The place where the assembly is, is richly tapessed and hanged, a princely and royall throne as appertaineth to a king, set in the middest of the higher place thereof. Next vnder the Prince sitteth the Chancellor, who is the voice and Orator of the Prince. On the one side of that house or Chamber, sitteth the archbishops & bishops, each in his ranke, on the other side the dukes and barons. In the middest

amiddeſt thereof vpon woolſackes ſitteth the Iudges of the Realme, the Maiſter of the Rowles, & the Secretaries of eſtate. But theſe that ſit on the woolſacks haue no voice in the houſe, but only ſit there to aunſwer their knowledge in the law, when they be aſked, if any doubt ariſe among the Lords: The Secretaries doe aunſwer of ſuch letters or things paſſed in counſell, whereof they haue the cuſtodie and knowledge: and this is called the vpper houſe, whoſe conſent and diſſent is giuen by each man ſeuerally, and by himſelfe, firſt for himſelfe, and then ſeuerally for ſo many as hee hath letters and proxies, when it commeth to the queſtion, ſaying onely content or not content, without further reaſoning or replying. In this meane time the Knights of the ſhieres and Burgeſſes of the Parlament (for ſo they are called that haue voice in Parlament, and are choſen as I haue ſaid before, to the number betwixt iij.C. and iiij.C.) are called by ſuch as it pleaſeth the Prince to appoint, into another great houſe or chamber by name, to which they aunſwere: and declaring for what ſhiere or towne they aunſwer, then they are willed to chooſe an able and diſcréete man, to be as it were the mouth of them all, and to ſpeake for & in the name of them, and to preſent him ſo choſen by them to the Prince: which done, they comming all with him to a Bar, which is at the nether end of the vpper houſe, there he firſt prayſeth the Prince, then maketh his excuſe of inabilitie, and prayeth the Prince that he would command the commons to chooſe another. The Chancellour in the Princes name doth ſo much declare him able, as he did declare himſelfe vnable, and thanketh the commons for chooſing ſo wiſe, diſcréete, and eloquent a man, and willeth them to goe and conſult of lawes for the cõmon-wealth. Then the ſpeaker maketh certain requeſts to the Prince in the name of the commons, firſt, that his maieſty would be content

that they may vse and enioy all their liberties and priuiledges that the common house was wont to enioy.

Secondly, that they may frankly and freely say their mindes, in disputing of such matters as may come in question, and that without offence to his Maiestie.

Thirdly, if any should chaunce of that lower house to offend, or not to doe or say as should become him, or if any should offend any of them being called to that his highnesse Court, that they themselues might (according to the auncient custome) haue the punishment of them. And fourthly, that if there came any doubt, wherevpon they shall desire to haue the aduise or conference with his Maiestie, or with any of the Lords, that they might doe it: all which he promiseth in the Commons names, that they shall not abuse, but haue such regard as most faithfull, true, and louing Subiectes ought to haue to their Prince.

The Chancellour aunswereth in the Princes name, as appertaineth. And this is all that is done for one day, and sometime two. Besides the Chancelour, there is one in the vpper house, who is called Clark of ỳ Parlament, who readeth the bills. For all that commeth in consultation either in the vpper house or in the neather house, is put in writing first in paper, which being once reade, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall think good. That done, they goe to another, and so another bill. After it hath bene once or twice reade, and doth appeare that it is somewhat liked as reasonable, with such amendment in words, and peraduenture some sentences, as by disputation seemeth to be amended: in the vpper house the Chancelour asketh if they wil haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that eftsones if any be disposed to obiect disputed again among them,

the

the Chancelour asketh if they will goe to the question: and if they agree to goe to the question, the he saith, here is such a lawe or act concerning such a matter, which hath been three read here in this house, are ye content that it be enacted or no? If the not contents be moe, the the bill is dashed, that is to say, the law is annihilated, and goeth no further. If the contents be the moe, then the Clarke writeth underneath: Soit baille aux commons. And so when they see time, they send such bills as they have approued by two or three of those which doe sit on the woolsacks to the commons: who asking licence, & comming into the house, with due reuerence, saith to the speaker: Maister speaker, my Lords of the vpper house have passed among them and thinke good, that there should be enacted by Parlament such an act, and such an act, and so readeth the titles of that act or acts. They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone, and the doore againe shut, the speaker rehearseth to the house what they said. And if they be not busie disputing at that time in another bill, he asketh them straight-way if they will haue that bill, or (if there be moe) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see & be seene of them all, hath before him, in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent downe from the Lordes. For in that poynt each house hath equall authority, to propound what they think mete, eyther for the abrogating of some law made before, or for making of a newe. All bills be thrice in three diuers dayes read and disputed vpon, before they come to the question. In the disputing is a meruailous good order vsed in the lower house. Yee that standeth vppe

bare-headed is vnderſtanded that hee will ſpeake to the bill. If moe ſtand vp, who that is firſt iudged to ariſe, is firſt heard, though the one doe prayſe the lawe, the other diſſwade it, yet there is no alteration. For euery man ſpeaketh as to the ſpeaker, not as one to another, for that is againſt the order of the houſe. It is alſo taken gainſt the order, to name him whom ye doe confute, but by circumlocution, as he that ſpeaketh with the bill, or he that ſpake againſt the bill, and gaue this & this reaſon. And ſo with perpetuall Oration not with alteration, he goeth through till hee doe make an end. He that once hath ſpoken in a bill, though he be cõfuted ſtraight, that day may not reply, no though he would change his opinion. So that to one bill in one day one may not in that houſe ſpeake twiſe, for elſe one or two with alteration would ſpend all the time. The next day hee may, but then alſo but once.

No reuiling or nipping wordes muſt be vſed. For then all the houſe will cry, it is againſt the order: and if any ſpeake vnreuerently or ſeditiouſly againſt the Prince or the priuie Counſell, I haue ſeene them not onely interrupted, but it hath beene moued after to the houſe, and they haue ſent them to the Tower. So that in ſuch a multitude, and in ſuch diuerſity of minds, and opinions, there is the greateſt modeſty and temperance of ſpeech that can bee vſed. Neuertheleſſe, with much doulce and gentle termes, they make their reaſons as violent and as vehement the one againſt the other as they may ordinarily, except it be for vrgent cauſes, and haſting of time. At the after-noone they kéepe no Parlament. The ſpeaker hath no voyce in the houſe, nor they will not ſuffer him to ſpeake in anie Bill to moue or diſſwade it. But when any Bill is reade, the ſpeakers office is, as briefly and as plainly as he may, to declare the effect thereof to the houſe. If the commons

mons doe assent to such Bills as be sent to them first agreed vpon from the Lords thus subscribed, Les commons ont assentus, so if the Lords doe agree to such bills as be first agreed vpon by the Commons, they send them downe to the speaker thus subscribed, Les Seigneurs ont assentus, If they cannot agree, the two houses (for euerie Bill from whence so euer it dooth come, is thrise read in each of the houses) if it be vnderstoode that there is any sticking, some-times the Lordes to the Commons, some-time the Commons to the Lordes doe require that a certaine of each house may meete together, and so each part to be enformed of others meaning, and this is alwayes graunted. After which meeting for the most part, not alwayes eyther part agrees to others bills.

In the vpper house they giue their assent and dissent each man seuerally and by himselfe, first, for himselfe, & then for so many as he hath proxie. When the Chancellour hath demaunded of them, whether they will goe to the question after the bill hath beene thrise reade, they saying only content or not content, without further reasoning or replying: and as the more number doth agree, so it is agreed on, or dashed.

In the nether house none of them that is elected, eyther knight or Burges can giue his voyce to another, nor his consent or dissent by proxie. The more part of them that be present onely maketh the consent or dissent. After the bill hath beene twise reade, and then engrossed, and eft-sones reade and disputed on enough as is thought, the speaker asketh if they will goe to the question. And if they agree, he holdeth the bill vp in his hand, and saith: As many as will haue this bill goe forwarde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, and as manie as will not, say no: as the crie of yea or no is big-

ger, ſo the bill is allowed or dalhed. If it be a doubt which crie is the bigger, they deuide the houſe, the ſpeaker ſaying, as many as doe allowe the bill goe downe with the bill, and as many as doe not, ſit ſtill. So they deuide themſelues, and being ſo deuided, they are numbred who make the more part, and ſo the bill doth ſpæd. It chaunceth ſometime that ſome part of the bill is allowed, ſome other part hath much contrariety and doubt made of it: & it is thought if it were amended it would goe forward. Then they chooſe certaine committees of them who haue ſpoken with the bill and againſt it, to amend it, and bring it in againe ſo amended, as they amongſt them ſhall think mete: and this is before it is engroſſed, yea, and ſometime after. But the agrement of theſe committes is no preiudice to the houſe. For at the laſt queſtion they will eyther accept it or dalh it, as it ſhall ſeme good, notwithſtanding that whatſoeuer the committees haue done.

Thus no bill is an act of Parlament, ordinance, or edict of law, vntill both the houſes ſeuerally haue agreed vnto it after the order aforeſaide, no nor then neyther. But the laſt day of that parlament or ſeſſion the Prince commeth in perſon in his Parlament robes, and ſitteth in his ſtate: all the vpper houſe ſitteth about the Prince in their ſtates and order in their robes. The ſpeaker with all the common houſe commeth to the Barre, and there after thankſgiuing firſt in the Lords name by the Chancelour, &c. And in the commons name by the ſpeaker to the Prince, for that hee hath ſo great care of the good gouernment of his people, and for calling them together to aduiſe of ſuch things as ſhould be for the reformation, eſtabliſhing, and ornament of the common-wealth: the Chancelour in the Princes name gineth thanks to the Lords and commons for their paines and trauailes taken, which hee ſayth the Prince will remember

member and recompence when time and occasion shall serue, & that he for his part is ready to declare his pleasure concerning their proceedings, whereby the same may haue perfect life & accomplishment by his princely authority, and so haue the whole consent of the Realm. When one reades the titles of euery act which hath passed at that Session, but only in this fashion: An act concerning such a thing, &c. It is marked there what the Prince doth allow, and to such he saith: Le roy, or la Royne le veult. And those be taken now as perfect lawes and ordinances of the Realme of England and none other, and as shortly as may be put in print, except it be some priuate cause or law made for the benefit or preiudice of some priuate man, which the Romaines were wont to call *priuilegia*. These be onely exemplified vnder the seale of the Parlament, & for the most part not printed. To those which the Prince liketh not, he aunswered, Le Roy, or la Royne saduisera, and those be accounted vtterly dashed and of none effect.

This is the order and forme of the highest and most authenticall Court of England, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted available to make any new forfaiture of lyfe, member, or landes of any English man, where there was no lawe ordayned for it before. Now let vs speake of the sayde parts when they be seuerall.

Of the Monarch, King, or Queene of England.

CHAP. 4.

THE Prince whom I now call (as I haue often before) the Monarch of England, King, or Quéene, hath

hath absolutely in his power the authority of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure, or the aduice onely of his priuie Counsell. His priuie Counsell be chosen also at the Princes pleasure out of the Nobility or Barony, and of the Knights, and Esquires, such and so many as he shall thinke good, who doth consult daily, or when neede is of the weighty matters of the Realme, to giue therein to their Prince their best aduise they can. The Prince doth participate to them all, or so many of them as he shall thinke good, such legations and messages as come from forraigne Princes, such letters or accurrents as be sent to himselfe or to his Secretaries, and keepeth so many ambassades and letters sent vnto him secret as he will, although these haue a particuler oath of a Counsellour touching faith and secrets administred vnto them whē they be first admitted into that company. So that herein the Kingdome of England is far more absolute than either the Dukedome of Venice is, or the Kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whom he shall thinke so to deserue, without processe of law or forme of iudgement. This hath bene sometime vsed within the Realme before any open warre, in suddaine insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had cōsideration of the consequence and example, as much as of the present necessitie, especially, when by anie meanes the punishment might haue bēn done by order of lawe. This absolute power is called martiall law, and euer was, and necessarilie must bee vsed in all camps and Hosts of men, where the time nor place doe

suffer

ſuffer the tarriance of pleading and proceſſe, be it neuer ſo ſhort, and the important neceſſitie requireth ſpædie execution, that with more awe the Souldier might bee kept in more ſtrait obedience, without which neuer captaine can doe any thing vaileable in the warres.

The Prince vſeth alſo abſolute power in crying and decræing the money of the realme by his proclamation onely. The money is alwaies ſtamped with the princes image and title. The form, faſhion, maner, weight, fineneſſe and baſeneſſe thereof, is at the diſcretion of the Prince. For whom ſhould the people truſt more in that matter than their prince, ſæing the coyne is onlie to certifie the goodneſſe of the mettall and the waight, which is affirmed by the princes image and marke? But if the Prince will deceiue them, & giue them copper for ſiluer or golde, or enhance his coyne more than it is worth, he is deceiued himſelfe, as well as he doth goe about to deceiue his ſubiects. For in the ſame ſort they pay the Prince his rents and cuſtomes. And in time they will make him pay ratibly or more for meat, drinke, and victuals for him and his, and for their labour: which experience doth teach vs now in our daies to be done in all Regions. For there euer hath bæne, and euer will be a certaine proportion betweene the ſcarcitie and plentie of other things, with gold and ſiluer. For all other meaſures and weights, alwell of dry things as of wet, they haue accuſtomed to be eſtabliſhed or altered by the Parlement, and not the princes proclamation onely.

The Prince vſeth alſo to diſpence with lawes made, whereas equitie requireth a moderation to be had, and with paines for tranſgreſſing of lawes, where the pain of the Lawe is applyed onely to the Prince. But where the forfaite (as in popular actions it chaunceth

manie times) is part to the Prince, the other part to the declarator, detector or informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that manner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man object against the offendor. Whereby notwithstanding that he hath the Princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offender.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Vniuersities, and certaine Colledges which be exempt.

All writtes, executions and commaundements, be done in the Princes name. We do say in England, the life and member of the kings subiects are the kings onlie, that is to say, no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas which touch the life or the mutilation of man, be called pleas of the crowne, nor can bee done in the name of any inferior person than he or hee that holdeth the crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine Countie Palatines, as Chester, Durham, and Elie, which were hault Iusticers, and writtes went in their Name, and also some Lordes Marchers of Wales, which claimed like priuiledge: all these are now worne away. The supreme iustice is done in the kings name, and by his authoritie onely.

The

¶ The Prince hath the wardship and first marriage of all those that holde land of him in chiefe. And also the gouernment of all fooles naturall, or such as be mad by aduenture of sicknesse, and so continue, if they be landed. This being once grounded by act of parlement (although some inconuenience hath béen thought to grow thereof, and since that time it hath béene thought verie vnreasonable) yet once annexed to the Crowne, who ought to goe about to take ẏ club out of Hercules hand? And being gouerned iustly & rightly, I sée not so much inconuenience in it, as some men would make of it: diuers other rights and preheminences the Prince hath, which be called prerogatiues royals, or the prerogatiue of the king, which be declared particularly in the books of the common lawes of England.

To be short, the prince is the life, the head, & the authoritie of all things that be done in the reame of England. And to no prince is done more honor & reuerence, than to the king and queene of England: no man speaketh to the Prince, nor serueth at the table, but in adoration and knéeling, all persons of the realme be bare headed before him: insomuch that in the chamber of presence where the cloth of estate is set, no man dare walk, yea though the Prince be not there, no man dare tarrie there but bare-headed. This is vnderstood of the subiects of the Realme, for all strangers bee suffered there and in all places to vse the maner of the country: such is the ciuilitie of our Nation.

The chiefe points wherein one Common wealth doth differ from another.

CHAP. 5.

NOw that we haue spoken of the Parlement (which is the whole, vniuersall, and generall consent and

authoritie aswel of the prince, as of the nobilitie & commons, that is to say, of the whole head and bodie of the realme of England) and also of ỹ prince, (which is the head, life and gouernour of this common-wealth) there remaineth to shewe, how this head doth distribute his authoritie and power to the rest of the members for the gouernment of his realme, and common-wealth of the politicke bodie of England. And whereas all common-wealths & gouernments be most occupied, and be most diuers in the fashion of fiue thinges: In making of lawes & ordinances, for their own gouernment: in making of battell & peace, or truce with forraine nations, in prouiding of money for the maintenance of thẽselues within themselues, and defence of themselues against their enemies, in chosing and election of the chiefe officers and magistrates: and fiftly, in the administration of iustice. The first and third wee haue shewed is done by the prince in Parlement. The second and fourth, by the prince himselfe: the fift remaineth to be declared.

Of three manners and formes of tryals or iudgements in England.

CHAP. 6.

By order and vsage of England, there be 3. wayes and maners whereby absolute and definite iudgement is giuen, by parlement, which is the highest and most absolute, by battle, & by the great assise.

Tryall or iudgement by Parlement.

CHAP. 7.

The manner of giuing iudgement by Parlement betweene priuate and priuate men, or betweene the Prince

Prince and any priuate man, be it in matters criminal or ciuil, for land or for heritage, doth not differ from the order which I haue prescribed, but it proceedeth by bil thrise read in each house, and assented to as I haue said before, and at the last day confirmed and allowed by the Prince. Howbeit such bills be seldome receiued, because that great counsell beeing enough occupied with the publique affaires of the realm, will not gladly intermedle it selfe with priuate quarrels and questions.

The tryall of iudgement by battle.

CHAP. 8.

THis is at this time not much vsed, partly because of long time the Pope and the clergy, to whom in time past we were much subiect, alwaies cried against it as a thing damnable and vnlawfull: and partly because in all common-wealths, as to the tongue, so to the manners, fashions, habits, yea & kinds of trials & iudgements, and to all other thinges that is therein vsed, time & space of yéres bringeth a change. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whensoeuer it be demanded. The manner of it is described in Briton.

The triall by assise or twelue men, & first of

of the three parts which be necessary in iudgment.

CHAP. 9.

THe two first iudgements be absolute, supreme and without appeale, and so is also the iudgement by the great assise. And because our manner of iudgements in England is in many things different from the fashion

vsed either in France or in Italie, or in any other place the Emperors laws and constitutions (called the ciuill lawes) be put in vse, it wil be necessary here to make a little digression, to the intent, that that which shall be said hereafter, may be better vnderstoode. All pursuits and actions (we call them in our English tongue pleas) and in barbarous (but nowe vsuall Latine, placita, taking that name abusiue of ỹ definitiue sentence, which may wel be called placitum, or δόγμα. The French vseth the same, calling in their language, the sentence of their Iudges arreste, or arest, in which wordes notwithstanding after their custome they doe not sounde the s. But we call placitum the action, not the sentence, and placitare barbarously, for to plead in English, agere, or litigare. Now in all iudgements being two parties, the the first we call the impleader, suter, demaunder, or demaundant, and plaintiffe. In criminall causes, if hee professe to be an accuser, we call him appellant, or appellour, and so, accusation we call appeale. The other we call the defendant, & in criminall causes, prisoner, for he cannot answere in causes criminall before he do render himselfe, or be rendered prisoner.

Iudex, is of vs called Iudge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Iudges, but the twelue men. And the same order aswell in ciuill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. 10.

PLeas or actions criminal, be in English called pleas of the crowne, which be all those which tend to take away

away a mans life or any member of him, for his euill deserning against the Prince and common-wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subiects is spoyled either of lyfe or member, the Prince is endamaged thereby, & hath good cause to aske account how his subiects should come to that mischiefe. And againe, forsomuch as the Prince who gouerneth the Scepter, and holdeth the crowne of England, hath this in his care and charge, to see the Realme well gouerned, the lyfe, members, and possessions of his subiects kept in peace and assurance: hee that by violence shall attempt to breake that peace and assurance, hath forfaited against the scepter & crowne of England: and therefore not without a cause in all inquisitions and inditements, if any be found by the xij. men to haue offended in ỹ behalfe, straight the Prince is said to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the Prince. Neuertheless, it is neuer defended, but the prisoner, and partis defendant, in any cause may alledge for him all the reasons, meanes, and defences that he can, and shall bee peaceably heard and quietly. But in those pleas and pursuites of the Crowne, Procuror or Aduocate hee getts none, which in ciuill and pecuniarie matters (be it for land, rent, right, or possession, although hee pleade against the Prince himselfe) he is neuer denied.

Saiuing in appeales, & vpon a speciall plea, Actio, is the parties whol suite: Breue, is the kings precept.

Pleas ciuill be either personall or reall: personall, as contracts or for iniuries: reall, be either possessorie, to aske, or to kéep the possession: or in rem, which wee call a writ of right. For that which in the ciuill law is called actio, or formula, wee call writte in English: so the Grékes called it word for word λογος, and in our barbarous

barous Latine we name it *breue*.

And as the olde Romanes had their actions some *ex iure ciuili*, and some *ex iure prætorio*, and ordinarily *prætor dabat actiones, & formulas actionum*: so in Englande we retaine still this, and haue some writtes out of the Chancerie, other out of the common pleas, or the kings bench.

Of the chiefe Tribunalls, Benches, or Courts of England.

CHAP. II.

IN times past (as may appeare to him that shal with iudgement reade the Hystories and antiquities of England) the courts and benches followed the king and his court whereseuer he went, especially shortly after the conquest. Which thing beeing found verie cumbersome, painful, & chargeable to the people, it was agréed by Parlement that there should bee a standing place where iudgement should be giuen. And it hath long time béene vsed in Westminster hall, which king William Rufus builded for the Hall of his owne house. In that hall be ordinarily séene three Tribunals, or Iudges seates. At the entry on the right hand the common-pleas, where ciuill matters are to be pleaded, specially such as touch lands or contracts. At the vpper end of the hall on the right hand, the kings bench, where pleas of the crowne haue their place. And on the left hand sitteth the Chancellor accompanied with ỹ maister of the Rolles, who in Latin may be called *custos archiuorum Regis*, and certaine men learned in the ciuill law, called Maisters of the Chauncerie, in Latine they may be called *Assessores*.

Of

Of the times of pleading called Termes: and of the Chauncelour and Chauncerie.

CHAP. 12.

TWo things may be moued in question here, how all England (being so long and so large, & hauing so many shires & prouinces therin) can be answered of iustice in one place, & in 3. benches, be they neuer so great: Another (whereas the Kings bench is exercised in criminal causes, & in all pleas of the crown, and the common place in all ciuil causes, reall, and personall) what place then hath the Chauncerie:

The first question will seme more merualous, and haue more occasion of doubt, when I shall also tell that the Law is not open at all times, no, not the third part of the yere. But where all other Citties and common wealthes had all the yeare pleas, suites, and iudgements, except for certaine holy dayes and harueſt, and vintage, or when for some vrgent cause the lawe was commaunded to be stopped, which is called *Iustitium*: Contrary in ours it is but fewe times open. That is only foure times in the yeare, which they call Termes. After Michaelmas about ten dayes, during fiue or sixe weekes at the least. After Christmas about a moneth, enduring by the space of three weekes. Then from xbij. dayes after Easter by the space of three weeks and odde dayes. Likewise from the first or seauenth day after Trinity sunday, during two weekes and odde dayes. All the rest of the yeare there is no pleading, entring, nor pursuing of actions. This small time, and all that, but in one place may seme very iniurious to the people, who must be faine to suffer much wrong for lack of Iustice and of place and time to pleade: but vnto that

héereafter I intend to answere more fully, and in the meane while that shall suffice which the wise Cato answered to one who mooued that the pleading place in Rome might be conered ouer with canuasse as their Theaters were, to the intent that the plaintifs and defendants that were there might pleade their matters more at ease, and not be in so much daunger of their health by the heate of the Sunne striking full and open vpon their heads, which was no small griefe and disease, specially at Rome. Nay (sayth Cato) for my part I had rather wish that al the waies to the place of pleading were cast ouer with Galthrops, that the feet of such as loue so well pleading, should feele so much paine of those prickes in going thither, as their heads doe of the Sunne in tarrying there: hee meant that they were but idle, hote heads, busie-bodies, and troublesome men in the common-wealth that did so nourish pleading: good labourers and quiet men could be content to end their matters at home by iudgment of their neighbours and kindsfolke, without spending so their money vpon Procurers and Aduocates whom wee call Atturnies, Counsailers, Sergeants, and generally men of Lawe. Those hee accounted profitable Cittizens, who attend their honest labour and businesse at home, and stand not wayting and gaping vppon their Roles and Processe in the law: as for the other, by his iudgment, it was no matter what mischiefe they suffered. To the other question of the Chancerie, this I answere: That our law which is called of vs the common law, as yée would say *Ius ciuile*, is, and standeth vppon ἀκριβοδίκαις, that is *Ius summum*: and their maximees be taken so straitly, that they may not depart from the tenour of the wordes, euen as the olde ciuill Lawe was. And therefore as that lacked the helpe of a Pretor (which might *moderari illud ius summum*, giue actions where

none

none was, mittigate the exactnesse and rigour of the law written, giue exceptions, as *metus, doli, mali, minoris, ætatis, &c,* for remedies, and maintayne alwayes *equum bonum:*) the same order and rancke holdeth our Chauncerie, and the Chauncelour hath the verie authority herein as had the Pretor in the olde ciuill Law before the time of the Emperours. So he that putteth vp his bill in the Chauncerie, after that he hath declared the mischiefe wherein hee is, hath relefe as in the solemne *Forum*. And for as much as in this case hee is without remedy in the common lawe, therefore he requireth the Chauncelour according to equity and reason to prouide for him, and to take such order as to good conscience shal appertaine. And the Court of the Chancerie is called of the common people the Court of conscience, because that the Chauncelour is not strained by rigour or forme of words of lawe to iudge but *ex æquo* and *bono*, and according to conscience as I haue sayde. And in this Court the vsuall and proper forme of pleading of England is not vsed, but the forme of pleading by writing, which is vsed in other Countries according to the ciuill law: and the tryall is not by xij. men, but by the examination of witnesse as in other Courts of the ciuill lawe.

Out of this Court, as from the person of the Prince come all manner of originall Writtes. The declaration of Writtes is at large set downe in the register of Writts, and in the *Natura brevium*. Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions, &c.

The Iudges of this Court are the Lord Chauncelor of England, Assistants, the maister of the Roles, and fiue Maisters of the Chauncerie, which are commonly Doctors of the ciuill law.

Officers are the fiue Clarks of the Chauncerie, the

Clark of the Crowne generall, the Regiſter, the Controler of the Seale, two Examiners, the Clarke of the Hamper, the three Clarks of the Petty bagge, the Curſiters, the Sergeant of the Mace.

The lord Chancelor is the keper of the great Seale, and hath it carried with him whereſoeuer he goeth.

The maiſter of the Roles is the keper of the Records, Iudgements, and Sentences giuen in the Court of Chauncerie.

The ſixe Maiſters are aſſiſtants to the Court, to ſhew what is the equity of the ciuill Law, and what is Conſcience.

The Clark of the Crowne is the chiefe Guardian of all the matters of the Crowne: what are Crowne matters and pleas of the Crowne, ſee in the learned booke of Stanford, called the Pleas of the Crowne.

The ſixe Clarks are the Aturnies, as well for the Plaintiffe, as Defendant in euery ſute in this Court.

The Regiſter is the engroſſer and keper of the decrees, publications, orders, and iniunctions iſſuing out of this Court.

The two Examiners are ſuch as take the examination of the witneſſes brought to proue or reproue any thing in ſute in this court, & to put their depoſitions and anſwers made to their interrogatories in writing.

The Comptroler of the Seale is to ſee and alow of all the Writs made in this Court.

The Clarke of the Hamper is he that doth receaue the fines due for euery Writ ſealed in this Court.

The three Clarks of the Petty bagge, are they that receaue the Offices that are founde in the Court of Wards.

The Curſiters are Clarkes appointed to their ſeuerall ſhires which doe write original Writs that belong to this Court, or the Common place.

The

The Sergeant carrieth the Mace before the Lorde Chauncelour, and is to call any man before him at his commaundement.

The Proceſſe in the Chauncerie is a *Sub pœna*, which is but to call the party before him vpon a paine, as vpon paine of xl. li. &c. And this is the way vſed to bring in the party, or elſe by the Sergeant as before.

The puniſhment is, if the party will not come in, or comming in, will not obay the order of the Court, impriſonment during the pleaſure of the Lord Chauncelour.

The order of proceeding is by Iniunctions, decrees, and orders which are to binde the party, and if he reſiſt, his puniſhment is impriſonment.

The matters in this Court are all cauſes wherein equity and extremity of law doe ſtriue, and where the rigour of lawes haue no remedy, but conſcience and the moderation of *Summum ius* hath ſufficient.

And here is to be noted, that conſcience is ſo regarded in this Court, that the lawes are not neglected, but they muſt both ioyne and mete in a third, that is, in a moderation of extremity.

This Court is called of ſome *Officina Iuris Ciuilis Anglorum*, becauſe out of this Court iſſue all manner of Proceſſe which giue the party his cauſe of action in other Courts.

Of Iudges in the common Law of England, and the manner of tryall and pleading there.

CHAP. 13.

THe Prince out of the numbers of thoſe who haue been Counſellors or Sergeants at the Law, which

be those who in Latine are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Iustice of the Kings bench, or simply chiefe Iustice, the other, chiefe Iustice of the common place, and others to the number of sixe or more, which haue each an ordinarie fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi iuriduti*, or *fasti*, in their distinct places, as I haue sayde before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for money, or land, or possession, part by writing, and part by declaration and altercation of the aduocates the one with the other, it doth so proceede before them till it doe come to the issue, which the Latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell issueth out, is voyded and emptied) and no where else: that stroke well striken is the departing of all the quarels. Issues or *status* in our law be ordinarily two, *facti* and *iuris*.

Of the Kings Bench.

CHAP. 13.

THE Kings Bench is the Kings Court, so called because vsually the Kings haue sitten there, and also because that therin all causes handled which appertaine to the Crowne: and such causes as wherein the King or Quéene is a party, if they properly appertaine not to some other Court.

The

The Iudges of the Kings Bench are the Lord chiefe Iustice of England, with other his companions assistant in giuing iudgement.

The Sergeants and Counsailours doe debate the cause.

The sentence is giuen by the chiefe Iustice, the others all are the most part assenting, as it shall appeare to be in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the Exchequer chamber, before all the Iustices of both the Benches, viz. the Kings Bench, and the common pleas, and the Lord chiefe Barron of the Exchequer.

The officers in the Kings Bench, are the chiefe Protonotarie, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Brevium, and Custos Sigilli.

The Protonotarie is hee, that recordeth all iudgements, orders, and rules in this Court, and all verdicts giuen, being not of Crowne matters.

The Secondarie to the Protonotaries deputy, for the said causes, and he is the keeper & maker vp of these Records in bookes.

The Clarke of the Crowne, is to frame all inditements of felony, treason, murther, &c. all manner of appeales, and after to record them, and enter the verdict, and to make and keepe the Records touching these matters.

The Clarke of the Exigents is to frame all manner of Processes of *Exigifacias*, which doe issue out of that Court to out-law any man, and to record the outlawrie.

The Clarke of the Papers is hee that keepeth all Roles, Scripts, and pleadings, and other things in writing which are not of record.

The Custos brevium is he which fileth all the writs indi-

iudiciall and originall, after the Sherife hath returned them, hee is chargeable if any be embeseled or priuily conueied away from the file.

The Custos Sigilli is he that doth kepe the Seale, and seketh all iudiciall Writts, and all Patents, licenses issuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There are certayne Atturnies belonging to this Court in number as the Protonotorie shall appoynt: those are for Plaintiffes and defendants in euery cause, and they frame and make the pleadings.

The manner of procéding in this Court is by Latitat, Arest, and Bill.

The Latitat is to bring the party in when he is not to be found, or will not appeare and answere.

Arrest is when the party is arrested, and then is driuen to finde baile, viz. two sufficient sureties or more as the case shall néde.

By Bill the suite is when the party is in *Custodia Mareschali*, and is from thence brought to answer.

The Matters in this Court are properly all matters of the Crowne, whereof see Stanfords booke afore-saide.

In these they procéde by Inditements, verdict, appeale, Improperly all suites wherein the King is a party, or may haue any losse. Such are Conspiracies, Champarties, Imbracer, Maintenance, Decies tantum maymes, Slanders, actions sur le cas: of these see Natura breuium.

Of

Of the Court of common-pleas.

CHAP. 15.

THe Court of common-pleas is the Kings Court, wherein are holden all common pleas betweene ſubiect & ſubiect, of all matters of Common law: ſo called, for that it ſerueth for the exact & preciſe adminiſtration of the common law.

The Iudges in this Court are, Lorde chiefe Iuſtice of the common pleas, three other his aſſociates. The ſergeant at the lawe, whoſe number is ſome-time more, ſometimes leſſe, at the pleaſure of the prince. Theſe all are ſworn to ſerue the turne of the common law at this barre.

Two of them are alwaies appointed to ſerue the Princes turne in what Court ſoeuer, and are called the Quænes Sergeants.

The officers of this Court are the Cuſtos Breuium, three Protonotaries, the Clarke of the warrants, the Clarke of the Eſſoynes, diuers Atturneis, Filliſers for euery ſhire, Exigenters for euerie ſhire, the Clarke of the Iuries, the Cirographer for fines, the Clarke of the Quænes-bluer for errors in this court committed, the Clarke of the ſeale, as before for the Kings-bench.

The Cuſtos Breuium is the chiefe Clarke in the court, and he hath the cuſtody of all the writts whatſoeuer returnable into this court, come they either at the day of the returne, or after the day, which is called Poſt diem.

The Protonotaries are they which after the parties haue appeared in Court, doe enter the matters in ſuite, and make the pleadings, and enter them.

The Filliſers are they which make vp all meane

proces vpon the originall writtes, and the same writs returned by the sherife, are by the atturneis deliuered to the Custos breuium to file or string, there to remaine of record.

The Exigenters are such as make out the exigentes and writs of proclamation in euerie countie, where the parties are, that vpon the measne proces or summons will not appeare.

The Clarke of the warrants is hee which doth take the warrants of an atturney, which shall prosecute for the plaintife or defendant: and is he that enrolleth all deedes acknowledged before the Justices of the same Court.

The Clarke of the Essoynes, is hee which doth essoyne the defendants in euery action, before the day of his appearance.

An essoyne is an ordinary delay by office of Court in action: and the officer before whom the Clark is to take the essoynes, is the puny Justice in the common pleas, who for that purpose, sitteth three dayes before the Tearme.

The common atturneis are such as are allowed in thys Court, by the Lorde chiefe Justice of the common pleas, and his assistance, to prosecute or defende according to the instructions of their clients, for the plaintife or defendant.

The Clarke of the Juries is hee that doth make the Venire facias, to the sherife to warne the Juries by.

The Cirographer is hee that hath the writte of couenant with the concord brought vnto him, & hee maketh Indentures tripartite, whereof two are deliuered to the partie for whose vse the fine is acknowledged. And the third part is reserued with him. And all the proclamations of the same fine, according to the statutes made, are endorced on the third part remaining, and it is com-

monly

monly called the foote of the fine.

The Clarke of the Quænes filuer is a diſtinct office of the fines, and is he who ſetteth downe the mony that her Maieſtie is to haue for the fine, according to the yeerely value of the lande confeſſed, knowne, depoſed, or agreed vpon.

All errors in this Court committed, are reformed in the Kings bench, before the Lord chiefe Iuſtice, and other Iuſtices there aſſiſtant by writ of error.

There is alſo the Clarke of the outlawries, who is the Kings Atturney generall, and hee entereth the outlawrie for the Queene, after the exigent deliuered: and he maketh all the writtes of outlawrie, and none are to be made but by him.

The matters of the common pleas are all ſutes of common law commenced by any writ, originall, reall, or perſonall.

Reall are ſuch as touch the inheritance, or fée of any man.

Perſonall are ſuch as touch tranſitorie thinges, as goods, chattels, perſonall wrongs. &c

The difference betweene a writ originall, and a writ iudiciall, is this: the originall ſaith in the end of it (in the perſon of the King or Quéene) teſte meipſo, or meipſa, apud Weſtmonaſterium. The iudiciall writ ſaith in the end, Teſte Chriſtophoro Wray, or Teſte Iacobo Dier, or ſuch other as ſhall be Lord chiefe Iuſtice of eyther of thoſe benches.

The order of proceſſes how they follow the one after the other. In this court is firſt a ſummoneas in ſome action, then an Attachias, but in moſt a Capias, then a Capias pluries, then Exigi facies, and a proclamation into the countie where the defendant dwelleth.

The Summoneas is the originall, and goeth out of the Chancerie, and is directed to the ſherife, to bring the

partie by a day.

The sheriffes order in seruing this writ, is to goe him selfe, or his Bailife, to the land, and there to garnish the partie, by sticking vp a sticke on his land, which done, the sherife returneth two common pledges, Iohannes Do, and Richardus Ro, and two Summonees, Richardus Denne, Henricus Fenne. After the summonees, if the partie come not in, issueth out an Attacheas, in nature of a precept, to authorize the sherife to goe to his land or house, and there to take a pledge for his apparance.

But if the partie plaintife meane to out-lawe the defendant, he getteth a Summoneas out of the Chauncery to the sherife to warne the partie, who returneth nihil habet, &c. Then the plaintife getteth a Capias to take his body, and then a Lias capias, then a pluries capias, to all which the Sherife returneth in order as they be giuen out, Non est inuentus. After which if the partie appeare not, goeth out to the sherife the Exigi facias, and a proclamation to proclaime the partie in fiue seuerall Countie daies: after which proclamations if he do not appeare, he is returned Quinto exactus, & non comparuit, & ideo vtlagatus, vnlesse hee do first purchase a Supersedeas, to the court to surcease. The Supersedeas is granted at the sute of the plaintife, to stay the outlawrie, and is an apparance to the sute, for the defendant suggesting to the court, that his exigent improuide emanauit, shewing that the defendant was alwaies readie to appeare by his atturney. This done, the plaintife declareth, the defendant answereth, if the aunswere be issuable they proceed to trial. The maner of proceeding is either to ioyne issue, and so to passe to verdict, or els to demurre. The triall is by verdict, when the question is made de facto, as where the matter was doone, when, by whom, &c.

Of

Of the two manner of Issues.

CHAP. 16.

IF the question be of the law, that is, if both the parties doe agree vpon the fact, and each do claime that by law hee ought to haue it, and will still in that sort maintaine they^r right, then it was called a demurrer in law: where if in the law the case seeme to ỹ Iudges ỹ sit, doubtfull, it is called a checker chamber case, and all the Iudges will meete together, and what they shall pronounce to be the lawe, that is helde for right, and the other partie looseth his action or land for euer. If the sergeants or counsellers do standе vppon anie point in the law which is not so doubtfull, the Iudges who be taken for most expert, biddes him goe forward, and if he hath no other to say, but standeth vppon that poynt of the law, that bidding go forward, is taken that hee looseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or Iuris. So is that case where the law is not doubtfull, according to the matter conteined in the declaration, answere, replication, reioynder, or triplication, the Iudge out of hande decideth it. And it is the manner that eche partie must agrée to the other still in ỹ fact which he cannot deny. For if he once come to denie any deede as not doone, not his writing, that the man by whō the aduersarie claimeth, was not the aduersaries auncestor, or the euidence which his aduersarie bringeth is not true, or that his gift was former, or anie such like exception which is anaileable to abate the action, or barre the partie: and the other ioyneth in the affirmatiue, and will auerre and prowe the same, this is called the issue, and immediatly

But sometimes it is determined by the same court onely.

This should be meant of a respondes ouster, when the opinion is against him that taketh an exception. which is not peremptory. He may deny it by protestation.

ly all queſtion of the law ceaſeth, as agréd by both the parties, that there is no queſtion in the law. Then as ỹ iſſue facti is found by the twelue men of whom we ſhal ſpeake heereafter, ſo the one partie or other loſeth his cauſe and action: ſo that contrarie to the manner of the ciuill law, where firſt the fact is examined by witneſſes indices, torments, and ſuch like probations, to find out the truth thereof, and that done, the aduocates doe diſpute of the law, to make of it what they can: ſaying, ex facto ius oritur. Heere the Sergeants or counſellers before the Iudges doe in paſſing forward with their pleading determine and agrée vpon the lawe, & for the moſt part, and in maner all actions, aſwel criminall as ciuil, come to the iſſue & ſtate of ſome fact which is denied of the one party, and auerred of the other, which fact being tried by the twelue men, as they finde, ſo the action is woone or loſt. And if a man haue many peremptory exceptions (peremptory exceptions I cal only thoſe which can make the ſtate and iſſue) becauſe the twelue men be commonly rude and ignorant, the partie ſhalbe compelled to chooſe one exception whereupon to founde his iſſue, which choſen, if hee faile in that by the verdict of twelue men, he loſeth his action and cauſe, and the reſt can ſerue him for nothing.

Hauing ſéene both in Fraunce & in other places manie deuiſes, edicts and ordinances, how to abridge proceſſe, and to finde how that long ſutes in lawe might be made ſhorter, I haue not perceiued nor read, as yet, ſo wiſe, ſo iuſt, and ſo well deuiſed a meane found out as this, by any man among vs in Europe.

Truth it is, that where this faſhion hath not beene vſed, and to them to whom it is newe, it will not bee ſo eaſily vnderſtood, and therefore they may peraduenture be of contrary iudgement: but the more they doe weigh & cõſider it, the more reaſonable they ſhal find it.

How

How the issue, question, or status iuris is decided, I haue told: now I will shew how it is tried whē it doth come to the question, state, or issue of the dēde or fact. And first I must speake more largelie of the manner of proceeding in the processe, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the Court of Exchequer.

CHAP. 17.

THe Romanes had to execute the cōmandements of the magistrates, Lictores, Viatores, Accensos. The ciuill law since that time hath other names, termes, and officers. The execution of the commandements of the magistrates in England, is ordinarily done by the sherifes. The sherife (which is asmuch to say as the Rœue or Baily of the shire) is properlie word for word Questor prouinciæ, it is he which gathereth vp, and accounteth for the profits of the shire, that come to the Exchequer.

Seats in auncient Saxon, is ſ which we by a borowed term call treasure, whereof is deriued Scaccarium, signifying a court dealing with the Kings treasure or reuenues, and also escactor that is an officer, which imployeth the Kings profit.

The Exchequer (which is Fiscus principis, or ærarium publicum, and I cannot tell in what language it is called Scaccarium, some thinke it was first called statarium, because that there was the stable place to account for the reuenues of the crowne, aswel that which came of the patrimonie, which wee call the demeasnes, as that which commeth of other incident acquisitions, be they rents, customes, tenthes, quinzieſmes, taxes, subsidies, whereſoeuer the prince or his court be, according to the time and occasion) was a place stable, continuall, and appointed for to reckon and account. The hearers of the account (who in Latin may be called tribuni ærarij) haue auditors vnder them, which the Latines doe call Rationales, but they are the chiefe for the accounts

accounts of the Prince, & may be called iuridici rationales, in English we call them Barons of the Exchequer, whereof is one who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps, with others to them assistant: the Chanceller of the Exchequer, two Chamberlaines, and Atturney general. The chiefe of al is called high Treasurer of England, as you would say in Latine, Supremus ærarij anglici quæstor, or Tribunus ærarius maximus.

He hath the charge & keeping of the king or Queenes treasure, and many officers are at his sole appointment and to him accountant, as well in the tower, exchequer, as elswhere: as Auditors in the mint, Auditors & tellers in the Exchequer, Receiuers. &c.

The Chanceller is the vnder Treasurer, and is gouernour of the Court, vnder the high Treasurer. Many officers also are at his appointment.

The chiefe Baron is the iudge in lawe cases incident to this court, the three other Barons are assistants.

The Atturney is the Atturney generall, to defende the Quenes right, and to peruse all graunts, particulars, sutes, and causes handled in thys Court. There are common atturneis besides, which serue for the suters of this Court.

The other officers are two Remembrancers, two Clarkes of the Pipe, two of the first fruites and tenths.

The Remembrancers are those which keepe all the Recordes of the Exchequer betweene the Queene and her subiects, and enter the rules and orders there made, the one is for the Prince, the other is for the Lord treasurer.

The Clarkes of the Pipe are those that make leases vppon particulars, and receiue the sheriffes accounts, those receiue also the bonds & titles of other assurances.

In the office of the first fruites, are receiue all first fruites

fruites due to her Maiestie by Bishoppes, Deanes, and all ecclesiasticall persons, aunswerable by order of the Law.

Other officers are Tellers, Auditours, Collectours, rent-gatherers, taile makers, &c.

The matters of this court are all penal punishment, as intrusions, alienations without licence, penall forfaitures vpon popular actions (as a popular action is while the one part is giuen to the informer, the rest to the Prince.) Of these see the whole body of the statutes at large, or in Rastalles collection.

In this Court are handled all payments, accounts, expences of the Quenes reuenues.

The vsuall Processe of this Court is a *Sub pena* out of this Court, or a messenger to call the party.

In this Court be heard Quadruplatores, which we call Promoters, which be those that in popular and penall actions be delatores, hauing thereby part of the profit by the law assigned. In this court if any question be, it is determined after the order of the common lawe of England by the twelue men, as I haue saide: and all customers which were in Latine called Publicani, in Greeke *Telonai*, doe account in this office.

The sherife of the shire is called in our common Latine Vicecomes, as one would say, Vicarius comitis, or Procomes, doing that seruice, to attend vpon the execution of the cõmandements of the Tribunals or Judges which the Earle or County should doe: which Earle or County for the most part was attending vpon ẏ Prince in the wars, or otherwise about the Prince, as the word beareth, comes principis: whereby it may appeare, that the chiefe office of the County or Earle, was to see the Kings iustice to haue course, and to be well executed in the Shire or County, and the Princes reuenues well answered, and brought in ærarium Principis, which is

called of vs the treasury.

If any fines or amercements, which in Latine be called Mulctæ, be levied in any of the said Courts vpon any man, or any arrerages of accounts by the Latines called reliqua, of such thinges as is of customes, taxes, subsidies, or any other such occasions, the same the sherife of the shiere doth gather, and is respondent therfore in the Exchequer. As for other ordinary rents of patrimoniall lands, and most commonly for the taxes, customes, and subsidies, there be particuler receauers and collectours, which doe aunswere it into the Exchequer. The Shrieke hath vnder him an vnder Shrieke at his charge and appointment, learned somwhat in the law, especially if he be not learned himselfe, and diuers Bailifes which be called errants, whom he maketh at his pleasure, who can knowe each land and person in the shiere, and their ability to goe vpon enquests, either to distraine, or to summon him to appeare whom the sherife shall appoint: and for this cause to the sherifes, as to the Minister most proper of the law the Writs be directed.

When any thing commeth to an issue of the déde or fact, there is a Writ or writing directed to the Sherife of the shiere where the land is, wherevpon the controuersie is, or where the man dwelleth of whom the money is demaunded, which Writte is called *venire facias*. Then after the same effect an *alias*, *pluries*, or *distringas*, according to the nature of the action to the returne of the Shrieke. And if for any disobedience of not comming and appearing there be a fine (which the Latines doe call *Mulcta*) set vpon any Iurors head, the Shrieke is charged with it, and taketh the distresses which in Latine be called *Pignora*, and aunswereth therefore to the Exchequer. The Shrieke also is ready by himselfe or by his vnder Shrieke, to serue as well the Iustices of

peace

peace in their quarter Sessions, as the Iustices called *Itinerantes* in their great Allizes, when they come into the shiere, which is twice in the yeere, to dispatch and void actions criminall and ciuill depending at the common law, and which be come now to the issue. He hath also the charge of all the prisoners committed to the prison which we call the goale, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister, and highest for execution of such commaundements, according to the law as the Iudges doe ordaine, and this is enough for the Shriefe.

Of the xij. men.

CHAP. 18.

OF what maner and order of men in the common wealth the xij men be, I haue already declared. The Shriefe alwaies warneth xxiiij. to appeare least peraduenture any might be sick or haue a iust cause of absence: & if there be not enow to make an enquest, the absents be amersed. For although they be called xij. men, as a man would say *duodicem viri*, yet if they be xvj. xx. or the whole number of xxiiij. that is no matter, xij. they must be at the least to make an enquest, or as some call it a quest. And enquest or quest is called this lawfull kind of triall by xij. men. In actions ciuill which is eyther of contracts or for land, or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I said before be no lesse then xij. eyther part when they be come taketh their chalenges against so many of them as they will, which be that hee may not spende so much land a yeere, he is alied, lord, or seruant to his aduerse party,

he is his enemy, &c. And two of the whole number doe try, and alow or disalow the rest.

If after acceptions there be so many reiected, that there is not a full enquest, in some cases that day is lost, in some the enquest is filled ex circumstantibus: when the quest is full, they be sworne to declare the trueth of that issue, according to the euidence and their conscience. Then the Sergeants of either side declare the issue, and each for his Clyent saith as much as hee can. Euidences of writings be shewed, witnesses be sworn, and heard before them, not after the fashion of the ciuill law, but openly, that not only the twelue, but the Iudges, the parties, and as many as be present may heare what each witnesse doth say: The aduerse party, or his aduocates which we call Counsailors and Sergeants, interrogateth sometime the witnesses, and driueth them out of countenance.

Although this may séeme strange to our Ciuillians now, yet who readeth Cicero and Quintilian, well shall sée, that there was no other order and manner of examining witnesses, or deposing among the Romaines in their time. When it is thought that it is enough pleaded before them, and the witnesses haue said what they can, one of the Iudges with a briefe and pithy recapitulation, reciteth to the twelue in summe the arguments of the Sergeants of either side, that which the witnesses haue declared, and the chiefe points of the euidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing, deliuering to them the euidence which is shewed on eyther part, if any be, (euidence héere is called writings of contracts autenticall, after the manner of England, that is to say, written, sealed, and deliuered) and biddeth them goe together.

Then there is a Bayliffe charged with them, to kéep them

them in a chamber not farre off, without bread, drinke, light, or fire, vntill they be agréed: that is, till they all agrée vpon one verdict concerning the same issue, and vpon one among them, who shall speake for them all when they be agréed: for it goeth not by the most part, but each man must agrée. They returne, and in so few words as may be, they giue their determination: fewe I call fiue, seauen, or eight words at the most, (for commonly the issue is brought so narrow, that such number of words may be enough to affirme or to deny it,) which done, they are dismissed to goe whether they will. The party with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come, some xx. some xxx. or xl. miles or more, to the place where they giue their verdict, all the rest is of their owne charge. And necessarily all the whole xij. must be of that shiere, and iiij. of them of the hundred where the land lieth which is in controuersie, or where the party dwelleth who is the defendant.

Of parts of Shieres called Hundreds, Lathes, Rapes, Wapentakes.

CHAP. 19.

AN Hundred, or Lath, Rape, or Wapentake, be called of the diuisions or parts of shieres in diuers Countries diuersly named, after the manner and language of each Countrey. For the shieres be deuided, some into v. vij. xiij. xvj. xx. or xxx. Hundreds, more or lesse, either that they were at ỳ first C. Townes and Villages in each hundred: and although now they be but xvj. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first

as be now, or a few more or lesse, and they did finde the King to his warres an hundreth able men. Lathe, and Rape I take to be names of service, for that so manie Townes in olde time, and in the first poverty of the Realme did meet together in one day to carry the Lords corne into his barne, which is called in olde English a Lathe. Or that they met at commaundement of the Lord to reape his corne.

Or as some say, because in such places the subiectes had their Armor appoynted them, and there did take their weapons.

Wapentake I suppose came of the Danes, or peradventure of the Saxons. For that so many townes came by their orders then, to one place, where was taken a musker of their Armour and weapons, in which place from them that coulde not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in old English doe signifie all Armes offensiue, as sword, dagger, speare, launce, bill, bowes, arrowes.

Of the place where the Muskers were taken, or where the sayde services were doone, the hundreds, Lathes, Rapes, and Wapentakes, had and haue yet their names, which be most commonly good Townes, and it is to bee thought at the first they were all such. But sometime nowe in places whereof the hundred hath the name, no mention nor memory of a Towne remayneth: such mutation time bringeth with it of all things. A hundreth hath one or two high Constables, who hath some authority ouer all the lower and particular Constables. Those high Constables be made by the Iustices of the peace of the shiere, and each hundred hath his Bailife, who is made by the Lord, if any hath that liberty, or else by the Sherife of the shiere for the time being.

Of

Of the Court Baron.

CHAP. 10.

IT may appeare ſtrange that of xxvj. ſhieres, whereof each ſhiere is deuided into diuers hundreds, each hundred containing diuers Pariſhes, all pleading ſhould be but in one place, that is in Weſtminſter hall, and that but in certaine times of the yere, making little more than one quarter of the yere in the whole. And one would think that there ſhould be much lack of Juſtice and right, and much wrong taken without redreſſe. But it is not ſo: The people being accuſtomed to liue in ſuch an equality of Juſtice, and that in ſuch ſort, that the ritch hath no more aduantage therin than the poore, the Proces, and proceedings to the iudgement being ſo ſhort, and iudgements alſo being peremptory and without appellation: yet to help for ſmall matters, where no great ſumme is in queſtion, there are other Courtes. In euery ſhiere from three weekes to three weekes, the Sherife for ſmall thinges not paſſing xl.s. and in certaine hundreds and liberties the Baily likewiſe from three weekes to three weekes holdeth plea. And whoſoeuer is poſſeſſioner and owner of a Manor, may holde from three weekes to three weekes, or at his pleaſure of his Tennants, and amongſt his Tennants a Court called a Court Baron. And there his Tenants being ſworne make a Jury, which is not called the enqueſt, but the homage. Theſe principally doe enquire of the copy-holders, and other free-holders that be dead ſince the laſt Court, and bring in their heires, and next ſucceſſors, and likewiſe of incrochment or intruſion of any of the Tennaunts againſt the Lorde, or among themſelues. They make orders and lawes amongſt them-

themselues, the paine of them if they be after broken, commeth to the Lorde. And if any small matter be in controuersie, it is put to them, and commonly they doe end it. But these Courts doe serue rather for men that can be content to be ordered by their neighbors, & which loue their quiet and profit in their husbandry, more than to be busie in the Law. For whether party so euer will, may procure a Writ out of the higher Court, to remoue the plea to Westminster.

In Citties and other great Townes, there be diuers liberties to hold plea for a bigger summe, which doe determine as well as the common Lawe, and after the same manner, and yet for them that will, it may be remoued to Westminster hall.

King Henrie the eyght ordayned first a President, Counsailours, and Iudges, one for the Marches of Wales, at Ludlow, or elsewhere: another for the North parts of England, at Yorke, where be many causes determined. These two are as be Parlaments in France. But yet if there be any matters of great consequence, the party may moone at the first, or remoone it afterwards to Westminster Hall, and to the ordinary Iudges of the Realme, or to the Chauncelour, as the matter is.

These two Courts doe heare matters before them, part after the common law of England, and part after the fashion of the Chauncery.

Of the Leete, or Law day.

CHAP. 21.

LEete, or Law day is not incident to euery manno, but to those onely which by speciall graunt, or long prescription, haue such liberty. This was, as it may appeare,

appeare first a special trust and confidence and commission giuen to a fewe put in trust by the Prince, as is now to the Iustices of Peace, to see men sworne to the Prince, to take pledges and sureties in that manner of one for another to answere for obedience and trueth, to enquire of priuie conspiracies, frayes, murders, and bloodsheds, and to this was added the ouersight of bread and ale, and other measures. Many times they that be out of the homage and Court Baron of that manor and lordship, be neuertheleſſe astreined and aunswerable to come to the Léete. This Léete is ordinarily kept but twice in the yéere, & that at termes and times prescribed.

The Leete and Law day is all one, and betokeneth word for word, *Legitimum* or *iuridicium diem.* Lawe the olde Saxons called lant or lag, and so by corruption and changing of language from Lant to Leete, vnderstanding Day, they which kæpe our full English terme, call it yet law day.

Of the proceedings of causes criminall, and first of the Iustices of the Peace.

CHAP. 22.

Iustices of Peace.

BEfore the manner of proceéding in causes criminal can be well vnderstood, it will be necessary to speak of three persons, the Iustices of peace, ỹ Coroners, and the Constables. The Iustices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Marquises, Barons, Knights, Esquires, and Gentlemen, and of such as bee learned in the Lawes, such, and in such number as the Prince shall thinke mæte, and in whom for wisedome and discretion his

putteth his truſt, inhabitants within the County: ſauing that ſome of the high Nobility and chiefe Magiſtrates for honours ſake are put in all, or in the moſt of the commiſſions of all the ſhieres of England. Theſe haue no time of their rule limitted, but by commiſſion from the Prince alterable at pleaſure.

At the firſt they were but 4. after 8. now they come commonly to 30. or 40. in euery ſhire, either by increaſe of riches, learning, or actiuity in policy and gouernement. So many more being found, which haue either will, or power, or both, are not too many to handle the affaires of the common-wealth in this behalfe. Of theſe in the ſame commiſſion be certaine named, which be called of the *Quorum*, in whom is eſpeciall truſt repoſed, that where the commiſſion is giuen to forty or thirty, and ſo at the laſt it commeth to foure or three, it is neceſſary for the performance of many affaires to haue likewiſe diuers of the *Quorum*. The words of the commiſſion be ſuch, *Quorum vos* AB. CD. EF. *vnum eſſe volumus.*

Iuſtices of quorum.

The Iuſtices of the peace be thoſe in whom at this time for the repreſſing of robbers, theeues, and vagabounds, of priuy complots and conſpiracies, of ryots, and violences, and all other miſdemeanours in the common-wealth, the Prince putteth his ſpeciall truſt. Each of them hath authority vppon complaint to him made of any theft, robbery, man-ſlaughter, murder, violence, complots, ryots, vnlawfull games, or any ſuch diſturbance of the peace, and quiet of the Realme, to commit the perſons whom he ſuppoſeth offenders, to the priſon, and to charge the Conſtable or Sherife to bring them thither, the Iayler to receaue them, & keepe them till he and his fellowes doe méete. A few lines ſigned with his hand is enough for that purpoſe: theſe doe méet foure times in the yeare, that is in each quarter once, to

enquire

enquire of all the misdemeanours afore-said: at which dayes the sherife, or his vnder sherife with his Baylifs be there to attend vpon him, who must prepare against that time foure enquests of xxiiij. yeomen a piece of diuers hundreds in the shiere, and besides one which is called the great enquest out of the body of the shiere mingled withall. These fine enquests are sworne before them to enquire of all heretiques, traytours, theefs, murthers, man-slaughters, rapes, false moniers, extortioners, ryots, routes, forcible entries, vnlawful games, and all such things as be contrary to the peace and good order of the Realme, and to bring in their verdict. If they among themselues vpon their owne knowledge doe finde any culpable, they cause one of the Clarks to make the bill. And if any be there to complaine vpon any man for these faults, he putteth in his bill, which bill is presented first to the Iustices sitting vppon the bench, to see if it be conceaued in forme of lawe, which done, the complainant doth deliuer it to one of these enquests, and after the complainant is sworne, he declareth to them what he can, for the proofe of it. And if they finde it true, they doe nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted. The maner of the bill is such, *Inquiratur pro domino rege.*

This is not alwaies and in all places obserued, but onely concerning the graund enquest.

If they doe not find it true, they write on the backe-side *Ignoramus*, and so deliuer it to the Iustices, of whom it is rent into peeces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more straitly vnto. For this inditement is no conuiction: and if hee be indicted, and be not already in prison, the Sherife if hee can finde him, bringeth him into prison: if he cannot finde him, proceese is made out against him, to render himselfe prisoner, or else hee

shal be outlawed. So he is called three times in diuers countie dayes to render him-selfe to the Lawe. The fourth is called the exigent, by which hee is outlawed not reuring himselfe, as yee woulde say: *exactus*, or *actus in exilium*. The out-lawe loseth all the goods to the King for his disobedience. But if after hee will render himselfe to answere to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawrie is pardoned. These meetings of the Justices of peace foure times in the yeare, be called quarter sessions, or sessions of enquirie, because that nothing is there determined touching the malefactors, but onelie the custodie of them: and this kinde of proceading which is by inquisition of the twelue men within them selues, and theyr owne consciences, or by denunciation of him that putteth in his bill to the twelue, is called at the Kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace do meet also at other times by commaundement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harneſſe and able men, and sometime to take orders for the excessiue wages of seruaunts and labourers, for excesse of apparell, for vnlawfull games, for conuenticles and euill order in Alehouses, and Tauernes for punishment of idle and vagabond persons, and generally as I haue sayde, for the good gouernment of the shire, the Prince putteth his confidence in them. And commonly euery yeere, or each second yeare in the beginning of Sommer or afterwards, (for in the warme time the people for the most part be more vnruly) euen in the calme time of Peace, the Prince with his counsell chooseth out certaine articles out of penall Lawes alreadie made for to represse the pride and euill rule of the popular, and sendeth them downe to the Justi-

The vse of Capias and exigens vpon inditements is otherwise.

They are put to fines.

ces,

ces, willing them to loke vpon those points, and after they haue met together, & consulted among themselues how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, they deuide themselues by three or foure: and so each in his quarter taketh order for the execution of the said Articles.

And then within certayne space they méete againe and certifie the Prince, or his priuy Counsell, how they do find the shire in rule and order touching those points, and all other disorders. There was neuer in any common-wealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bridle of good order, and sooner loked vnto that they should not offend, than punished when they haue offended. For séeing the chiefe amongst them, their rulers to haue this speciall charge, and doe call vpon it, & if occasion so doe present, one or two presently eyther punished, or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselues, they amend, and doe promise more amendment. So that it is as a new furbushing of the good lawes of the Realme, and a continuall repressing of disorders, which doe naturally rest among men.

But as the inuention of this, and the vse & execution thereof is the most benefite that can be deuised for the cõmon-wealth of England: so when it shal be misused, dissembled with, or be contemned, and be done *pro forma tantum*, and as they terme it in Fraunce, par mainere d'acquit only, it will be the present ruine (though not at the first perceaued) of the cõmon-wealth. Of which the fault may be as wel in the commanders for not making good choice, what, & how they command, as in the commanded, for not executing that which is commaunded.

Of hue and crie and recogniſance taken vpon them that may giue euidence.

CHAP. 23.

By the old law of England, if any theft, or robbery be done, if he that is robbed, or he that ſeeth or perceiueth that any man is robbed doe leuie hue and crie, that is to ſay, doe cry and call for ayde, and ſay that a theft or robbery is done contrary to the Princes peace and aſſurance: the Conſtable of the Village to whom hee doth come, and ſo make that crie, ought to raiſe the pariſh to aide him and ſeeke the theefe, and if the theefe be not found in that pariſh, to goe to the next and raiſe that Conſtable, and ſo ſtill by the Conſtables and them of the Pariſh one after another. This hue and cry from pariſh to pariſh is carried, till the theefe or robber be found. That Pariſh which doth not his duty, but letteth by their negligence the theefe to depart, doth not onely pay a fine to the King, but muſt repay to the party robbed his dammages. So that euery Engliſh man is a Sergeant to take the theefe, and who ſheweth himſelfe negligent therein, doth not onely incurre euill opinion therefore, but hardly ſhall eſcape puniſhment: what is done with the theefe or robber when he is taken, I ſhall ſhewe you hereafter. The ſame manner is followed if any man be ſlaine, for ſtraight the Murtherer is purſued of euery man till hee be taken. So ſoone as any is brought to the Juſtices of peace by this hue or crie, by the Conſtable, or any other who doth purſue the malefactor, hee doth examine the malefactor, and writeth the examination, and his confeſſion: then he

he doth binde the party that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the malefactor, to be at the next sessions of goale deliuery, to giue their euidence for the Quæne. Hee bindeth them in recognisance of x. pound, xx. pound, xxx. pound, xl. or C. pound, according to his discretion, and the quality of the crime: which certified vnder his hand, is leuied vpon the recognisance, if they faile of bæing there.

Of the Coroner.

CHAP. 24.

BVt if any man, woman, or child, be violently slaine, the murtherer not knowne, no man ought or dare bury the body before the Coroner hath sæne it. The Coroner is one chosen by the Prince of the meaner sort of Gentlemen, and for the most part a man sæne in the lawes of the Realme, to execute that office. And if the person slaine (slaine I call hære, whosoeuer he be, man, woman, or child, that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) hee doth cause the body to be taken vp againe, and to be searched, and vpon the sight of the body so violently come to his death, he doth empanell an enquest of twelue men or moe, of those which come next by, be they straungers or inhabitants, which vppon their oathes, and by the sight or viewe of the body, and by such informations as they can take, must search howe the person slaine came to his death, and by whom as the doer or cause thereof.

These

These are not enclosed into a straite place, (as I tolde before of other enquests) but are suffered to goe at large, and take a day, sometime after xx. or xxx. dayes, more or lesse, as the fact is more evident, or more kept close, to giue their euidence, at which day they must appeare there againe before the said Coroner to giue their verdict. So sometime the person to haue slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or straunger, such as God will haue reuealed, be taken. For whosoeuer they doe finde as guily of the murther, hee is straight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the view of the body, and the giuing of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth, because that the death of euery subiect by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and Crowne doth stand and consist in the force of his people, and the mayntenance of them in security and peace.

Of the Constables.

CHAP. 25.

These men are called in the elder Bookes of our lawes of the Realme *Custodes pacis*, and were at the first in greater reputation than they be nowe. It may appeare that there was a credite giuen vnto them, not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affray chaunce

to

to be made, the Constables ought and will charge them that be at debate, to keepe the Princes peace, and whosoeuer refuseth to obey the Constable therein, all the people will set straight vpon him, & by force make him to render himselfe to be ordered. Likewise if anie bee suspected of theft, or receiuing, or of murther, or of manslaughter, the constable may take such persons, yea enter into any mans house with sufficient power, to search for such men till hee finde them: and if hee see cause, keepe the suspected persons in the stockes, or custodie, til he bring them before a Iustice of the peace to be examined. But for so much as euery little Village hath commonly two Constables, and many times artificers, labourers, and men of small abilitie bee chosen vnto that office: who haue no great experience, nor knowledge, nor authoritie, the Constables at this present (although thys they may doe vppon theyr owne authoritie) yet they seme rather to bee as it were the executors of the commaundement of the Iustices of peace. For the Iustice of peace as sone as he vnderstandeth by complaint that any man hath stollen, robbed, slaine, or any seruant, or labourer without licence, hath departed out of his Maisters seruice, or any that liueth idle and suspectly, knowing once in what parish hee is, he writeth to the constable of the parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Iustice, and if the Iustice doe finde cause, hee committeth him to the same Constable to conuey him further to the Princes gayle, where the partie must lie, till the Iustices of Peace doe meete eyther at theyr quarter sessions, or at their gaile deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and

One or two Constables, headborows or tithingmen.

be like to them, who are called Consuls in many townes and villages in Fraunce. The Constables are commonly made and swoorne at the Letes of the Lordes, chosen thereto by the homage, and they keepe that office sometime two, three, or foure yeares, more or lesse, as the parish doth agree. What head-borough doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borough or village: likewise tithingman is the chiefe of the tithing. Constable seemeth to me to come of our old English worde Kinning, which is Kinningstable, as yee would say, a man established by the King, for such thinges as appertaine to pleas of the crowne, and conseruation of the Kinges peace, and as I said at the first, where in some more reputation, approching to that authoritie which the Justices of peace now doe hold.

Kinningstable is Regia virgula, the kings rod or wand, signifying the kings power or authority, a representation wherof is the vse of maces and white staues by officers in the cõmonwealth.

Of the Sessions of gaole deliuerie, and the definitiue proceedings in causes criminall.

CHAP. 26.

HOw theeues and murtherers and other malefactors against the crowne & peace are taken and brought into hold to answer to iustice, partly by hue & cry, partly by information, & partly by the diligence of the Iustices of peace and the Constables: and how at the quarter Sessions they be indicted, or else by the Coroners yee haue heard before. Enditement (as yee may perceiue by that which is also gone before) is but a former iudgement of xii. men which be called enquirers, and no definitiue sentence, but that which in Latine is called *preiudicium*, it doth but shewe what opinion the countrey hath of the malefactor: and there-

therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arrainement, there be no man to pursue further, nor no evidence of witnesse or other triall and indices against him, he is without difficultie acquitted. No man that is once indicted can be delivered without arrainement: For as twelue have given a prejudice against him, so twelue againe must acquit or condemne him. But if the prisoner be not indicted, but sent to prison vppon some suspition or suspitious behaviour, & none do pursue him to the inditement, first being proclaimed thus, A.B. prisoner standeth here at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliverance: If no man doe then come, hee is delivered without any further proceſſe or trouble, agreeing first with the gayler for his fees. And these be called acquited by proclamation. Twise in every yeare, the one is commonly in Lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in Summer, the Prince doth send downe into euerie shire of England certaine of his Judges of Westminster hall, and some Sergeants at the lawe with commission to heare and determine ioyntly with the Justices of the peace all matters criminall and all prisoners which be in the Gaoles. These Judges doe goe from shire to shire till they haue done their circuite of so manie shires as be appointed to them for that yeare: at the end of the terme going before their circuite, it is written and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Justices of the peace of that shire, the sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer.

The sherife hath readie for criminall causes (as I writte before at the Sessions of inquiris) foure, fiue, or sixe enquestes ready warned to appeare that day to serue the Prince, and so many more as hee is commanded to haue ready to goe in ciuill matters betwixt priuate men, which they call Nisi prius, because that word is in the writ.

In the Towne-house, or in some open or common place, there is a tribunall or place of iudgement, made aloft vpon the highest bench, there sitteth the Iudges, which be sent downe in commission, in the middest. Next them on each side sit the Iustices of Peace, according to their estate and degrée. On a lower bench before them, the rest of the Iustices of Peace, and some other Gentlemen, or their Clarkes. Before these Iudges and Iustices there is a Table set beneath, at which sitteth the Custos Rotulorum, or keper of writs, Thereto, the vndersherife, and such Clarkes as do write. At the end of that Table there is a barre made with a space for the enquests, and twelue men to come in when they are called, behind that space another bar, and there stand the prisoners which be brought thether by the Gayler, all chayned one to another. Then the Cryer cryeth, and commaundeth silence. One of the Iudges briefly telleth the cause of their comming, and giueth a good lesson to the people. Then the prisoners are called for by name, and bidden to aunswere to their names. And when the Custos rotulorum hath brought foorth their endictments, the Iudges doe name one or two, or three of the prisoners that are indicted, whom they will haue arraigned. There the Clarke speaketh first to one of the prisoners: A. B. come to the Barre, hold vp thy hand. The clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a county, art endicted, that such a day, in such a place, thou hast stolne

with

with force and armes an horse, which was such ones, of such colour, to such a valor, and carried him away feloniously, and contrarie to the peace of our soueraine Ladie the Quéene. What sayest thou to it, art thou guiltie or not guiltie? If hee will not answere, or not answere directly guilty or not guiltie, after hee hath béene once or twice so interrogated, he is iudged mute, that is, damme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: hee is layd vpon a table, and another vpon him, and so much waight of stones or leade laid vpon that table, while as his body be crushed, and his life by that violence taken from him. Thys death some strong & stout hearted man doth chuse, for beeing not condemned of felonie, his blode is not corrupted, his landes nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is, condemned for a felon by the lawe. If he confesse the Inditement to be true, then when he is arraigned, no twelue men goe vpon him, there resteth but the Iudges sentence, of the paine of death.

If hee pleade not guiltie, as commonlie all théeues, robbers and murtherers doe, though they haue confessed the fact before the Iustice of the peace that examined them, though they be taken with the manner, which in Latine they call in flagranti crimine, howe soeuer it bée, if he plead there not guiltie, the clarke asketh him how hée will be tryed, and telleth him he must say, by God and the Country, for these bee the wordes formall of his tryall after inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrey, and then the Clarke replyeth, Thou hast béene indited of such a crime, &c. Thou hast pleaded not guiltie being asked howe thou wilt be

tried, thou hast answered by God and by the Countrey. Loe these honest men that be come here, be in the place and stead of the Countrey: and if thou hast any thing to say to any of them, loke vppon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Juror. B. C. come to the Booke, and so giueth him an oath to goe vprightly betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, hee calleth another, and so another, til there be twelue or aboue: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are vnknowne to him, nor they know not him, as I said being substantial yeomen that dwell about the place, or at the least in the hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and trauell, and not with such idle persons as be ready to doe such mischiefes.

When the enquest is full, and the prisoner hath obiected nothing against them, as indeede seldome hee doth, for the cause aboue rehearsed: The Clarke sayth to ỹ Crier, countes, (in French as ye would say reckon) and so nameth all those that be on the quest. The cryer at euerie name cryeth aloud, one, then two, three, foure, and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If anie can giue euidence, or can say any thing against the prisoner, let him come now, for hee standeth vppon his deliuerance. If no man come in, then the Iudge asketh who sent him to prison, who is commonlie one of the Iustices of peace: he (if he be there) deliuereth vp the examination which he toke of him, and vnderneath the names of those whō he hath bound to giue euidence: although the malefactor hath confessed the crime to the Iustice of the Peace, and that appeare by his hand

and

and confirmation, the twelue men will acquit the prisoner, but they which shoulde giue euidence pay theyr recognizance. Howbeit this doth seldome chaunce, except it be in small matters, and where the Justice of peace, who sent the prisoner to the gaole, is away. If they which be bound to giue euidence come in, first is read the examination, which the Justice of Peace doth giue in: then is heard (if he be there) the man robbed what he can say, being first sworne to say the truth, and after the Constable, and as manie as were at the apprehension of the malefactor: and so many as can say any thing, being sworne one after another to say truth. These be set in such a place as they may see the Judges and the Justices, the enquest and the prisoner, & heare them, and be heard of them all. The Judge after they bee sworne, asketh first the partie robbed, if hee know the prisoner, and biddeth him looke vpon him: hee sayth yea, the prisoner sometime sayth nay. The partie pursuiaunt giueth good ensignes, *verbi gratia*, I know thee well enough, thou robbedst mee in such a place, thou beatedst me, thou tookest my horse from me, and my purse, thou hadst then such a coate, and such a man in thy companie: The theefe will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue anie *indices* or tokens, which we call in our language euidence against the malefactor. When the Judge hath hearde them say enough, hee asketh if they can say anie more: If they say no, then hee turneth his speech to the enquest. Good men (sayth hee) yee of the enquest, yee haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your oath, and to your dutie, and doe that which God shall put in your minds

to

to the discharge of your consciences, and marke well what is sayde. Thus sometime with one enquest is passed to the number of two or three prisoners. For if they should be charged with more, the enquest will say, my Lorde, wee pray you charge vs with no more, it is enough for our memory. Manie times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but the inditement, the Clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, lands, and tenements the said person had at the time of the felony committed: and if they finde any, they shall bring it in: if none, they shall say so. If they finde him not guilty, they shal enquire whether he fled for the felony or no.

And there is a Bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is sayde, or would heare againe some of them that giue euidence, to interrogate them more at full, or if any that can giue euidence come late: it is permitted that anie that is sworne to say the truth, may be enterrogated of them to enforme their consciences. This is to be vnderstood, although it will seeme strange to all nations that doe vse the ciuill law of the Romaine Emperours, that for life and death there is nothing put in writing but the enditement onelie. All the rest is done openly in the presence of the Iudges, the Iustices, the enquest, the prisoner, and so many as will or can come so neere as to heare it, and all depositions and witnesses giuen alounde, that all men may heare from the mouth of the deponents and witnesses what is saide. As of this, so is it of al other prisoners after the same sort. By that time

that

that the enquests for the prisoners be dispatched, it is commonly dinner time, the Iudges and Iustices goe to dinner, and after dinner to returne to the same place: if the enquest be not ready for the prisoners, they goe to some other enquests of *Nisi prius*, which be ciuill matters and priuate, to driue out the time. The enquests haue no sooner agréed vpon their charge one way or other, but they tell the Baylife, and pray to be heard, and considering that they be themselues all this while as prisoners as I sayde before, it is no meruaile, though they make expedition. The prisoners be sent for againe to the Barre, the enquest which hath agréed, is called for each one of the Iury by his name, to which he aunswereth. Then the Clarke asketh if they be agréed, and who shall speake for them. One or moe sayth yea. He that speaketh for them all is called the fore-man, and commonly it is he that is first sworne: then the prisoner is bidden to hold vp his hand. The Clarke saith vnto him: Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guilty, being asked how thou wouldst be tried, thou saidst by God and thy Countrey. These honest men were giuen to thée by God and thy Prince for thy Countrey: Hearken what they say. Then he asketh of the enquest, what say you? Is he guilty or not guilty? The fore-man maketh aunswere in one word, guiltie, or in two, not guilty: the one is deadly, the other acquitteth the prisoner. So that neither Iudge nor Iustice hath to doe, or can reuerse, alter, or chaunge that matter, if they say guilty. The Clarke asketh what lands, tenements, or goods, the prisoner had at the time of the felony committed, or at any time after. Commonly it is aunswered, that they know not, nor it shall not greatly nede, for the Sherife is diligent enough to enquire of that, for the Princes and his owne aduaun-

tage, and so is the ercheator also.

Of him whom the twelue men pronounce guilty, the Iudge asketh what he can say for himselfe: if hee can reade, he demaundeth his Clergie. For in many felonies, as in theft of Oxen, Sheepe, Money, or other such thinges, which be no open robberies by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the felon shall be admitted to his Clargie, for which purpose the Bishop must send one with authority vnder his seale to be Iudge in that matter at euery Iayle deliuery. If the condemned man demaundeth to be admitted to his booke, the Iudge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth so well, as he can (God knoweth sometime very slenderly:) then he asketh of the Bishops Commissary, *legit vt clericus?* The Commissary must say *legit* or *non legit*, for these be words formall, and our men of law be very precise in their words formall. If hee say *legit*, the Iudge proceedeth no further to sentence of death: if he say *non*, the Iudge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely. Thou A. hast bene endicted of such a felony, and thereof arraigned, thou hast pleaded not guilty, and put thy selfe vpon God and thy Country, they haue found thee guilty, thou hast nothing to say for thy selfe, Lawe is, thou shalt returne to the place from whence thou cammest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then he saith to the Sherife, Sherife doe execution: he that claimeth his Clargie, is burned forthwith in the presence of the Iudges, in the brawne of his hand with a hote yron, marked with the letter T. for a theefe, or M. for a man-slear, in cases where Clargie is admitted, and is deliuered to the Bi-

shops

shops officer to be kept in the Bishoppes prison, from whence after a certayne time by another enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty, is acquitted foorth-with, and discharged of prison, paying the Jaylers fees: and if hee know any priuate man who purchased his indictment, and is able to pursue it, hee may haue an action of conspiracie against him, and a large amends: but that case chaunceth seldome.

The deliuery to the bishops prisō, and the purgation is taken away by statute.

They must be two at the least that conspired.

Certaine orders peculiar to England, touching punishments of malefactors.

CHAP. 27.

FOr any felony, man-slaughter, robbery, murther, rape, and such capitall crimes as touch not treason, and *læsam maiestatem*, we haue by the Law of England no other punishment, but to hang till they be dead: when they be dead, euery man may bury them that will, as commonly they be. Heading, tormenting, dismembring either arme or legge, breaking vpon the wheele, empaciling, & such cruell torments, as be vsed in other Nations by the order of the law, we haue not: and yet as few murthers committed as any where: nor it is not in the Iudges or the Iustices power, to aggranate or mittigate the punishment of the Law, but in the Prince onely, and his priuy Counsell, which is meruailous seldome done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with corde till they be dead, be hanged with chaines while they rot in the aire.

If the wife kill her husband, she shall be burned aline. If the seruant kill the maister, he shall be drawne on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof, by a newe law made in King Henry the eights time, shall be boyled to death: but this mischiefe is rare, and almost vnknowne in England. Attempting to impoyson a man, or laying awaite to kill a man, though hee wound him dangerously, yet if death follow not, is no felony by the law of England, for the Prince hath lost no man, and life ought to be giuen we say, but for life onely.

quære.

And againe, when a man is murdered, all be principals, and shall die, euen he that doth but hold the candle to giue light to the murtherers. For mittigation and moderation of paines, is but corruption of Iudges, as we think. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other Countries, to put a malefactour to excessiue paine, to make him confesse of himselfe, or of his felowes, or complices, is not vsed in England, it is taken for seruile. For what can he serue the common-wealth after as a free-man, who hath his body so haled & tormented, if he be not found guilty, & what amends can be made him? And if he must die, what cruelty is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the iudgement, the triall of the twelue goeth not vpon him: if he deny the fact, that which he said before hindereth him not. The nature of English-men is to neglect death, to abide no torment: And therefore he will confesse rather to haue done anie thing, yea to haue killed his owne father, than to suffer torment: for death our nation doth not so much esteeme as a meane torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death, than in England.

Againe,

Againe, the people not accuſtomed to ſée ſuch cruell tormentes, will pitty the perſon tormented, and abhorre the Prince and the Iudges, who ſhould bring in ſuch cruelty amongſt them, and the twelue men the rather abſolue him. There is an olde law of England, that if any Jayler ſhall put any priſoner being in his cuſtodie to any torment, to the intent to make him an appruer, that is to ſay, an accuſer, or Index of his complices, the Jayler ſhall die therefore as a felon. And to ſay the trueth, to what purpoſe is it to vſe torment? For whether the malefactour confeſſe or no, and whatſoeuer he ſaith, if the enqueſt of twelue doe finde him guilty, hee dieth therefore without delay, And the malefactour ſéeing there is no remedy, and that they be his Country men, and ſuch as he hath himſelfe agréed vnto it, doe finde him worthy death, yéelds for the moſt part vnto it, and doth not repine, but doth accommodate himſelfe to aſke mercy of God.

The nature of our Nation is frée, ſtout, hault, prodigall of life and blod: but contumely, beatinges, ſeruitude, and ſeruile torment, and puniſhment, it will not abide. So in this nature and faſhion, our ancient princes, and Legiſlators haue nouriſhed them, as to make them ſtout hearted, couragious, and Souldiours, not villaines and ſlaues, and that is the ſcope almoſt of all our policy.

The twelue as ſone as they haue giuen their verdict, are diſmiſſed to goe whether they will, and haue no manner commodity and profit of their labour and verdict, but onely doe ſeruice to the Prince and Common-wealth.

Of treaſon, and the triall which is vſed for the higher Nobility and Barrons.

CHAP. 28.

THE ſame order touching tryall by enqueſt of twelue men, is taken in treaſon, but the paine is more cruell. Firſt to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to be beheaded, and quartered, and thoſe ſet vp in diuers places. If any Duke, Marques, or any other of the degrée of a Baron, or aboue, Lorde of the Parliament be appeached of treaſon, or any other capitall crime, hee is iudged by his Pœres and equalls: that is, the yeomanrie doth not goe vpon him, but an enqueſt of the Lords of the Parliament, and they giue their voyce, not one for all, but each ſeuerally as they doe in Parliement, beginning at the youngeſt Lorde. And for Iudge one Lord ſitteth, who is Conſtable of England for that day. The iudgement once giuen, he breaketh his ſtaffe, and abdicateth his office. In the reſt there is no difference from that aboue written.

Or rather, high Steward of England.

THE

THE THIRD BOOKE.

Of that which in other Countries is called Appellation, or Prouocation, to amend the iudgement, or ſentence definitiue, which *is thought vniuſtly giuen in cauſes* criminall.

CHAP. 1.

IF the enqueſt of twelue men do ſáme to the Iudges & the Iuſtices to haue gone too violentlie agaynſt the euidence giuen in matters criminall, either it is, that vpon ſlender euidence they haue pronounced him guiltie, whom the Iudges and moſt part of the Iuſtices thinkes by the euidence not fully prooued guilty, or for ſome other cauſe, doe thinke the perſon rather worthy to liue than to die. The enqueſt is neuertheleſſe diſmiſſed: but when the Iudges ſhould pronounce the ſentence of death vppon the perſon found guilty, hee will deferre it, which is called, to repriue the priſoner, (that is to ſay, to ſend him againe to priſon) and ſo declare the matter to the Prince, and obtayneth after a time for the priſoner his pardon: and as for prouocation or appeale, which is vſed ſo much in other Countries, it hath no place in England, after ſentence giuen by the twelue, whereby the perſon is found guilty or not guilty: but without that repriuing, the ſentence is ſtraight put in execution by the Sherife.

And

And if they either escape, or die another death, the Sherife escapeth not to pay a great fine and raunsome at the Princes mercy: if hauing pregnant euidence neuertheless, the twelue do acquite the malefactor, which they will doe sometime, and especially if they perceaue eyther one of the Justices or of the Judges, or some other man to pursue too much, and too maliciously the death of the prisoner, and doe suspect some subornation of the witnesse, or of them which doe giue euidence, and sometime if they perceaue the Judge would haue the prisoner escape, and in repeating the euidence doe giue them thereof some watch-word. But if they doe (as I haue saide) pronounce not guilty vpon the prisoner, against whom manifest witnesse is brought in, the prisoner escapeth: but the twelue not onely rebuked by the Judges, but also threatned of punishment, and manie times commaunded to appeare in the Starre-chamber, or before the priuy Counsell for the matter. But this threatning chaunceth oftner than the execution therof, and the twelue aunswere with most gentle words, they did it according to their consciences, and pray the Judges to be good vnto them, they did as they thought right and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Queene now) that an enquest for pronouncing one not guilty of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but an huge fine set vpon their heads, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominy & shame. But those doings were euen then of manie accounted verie violent, tyrannicall, and contrary to the liberty and custome of the Realme of England. Wherefore it commeth verie seldome in vse, yet so much at a time the enquest may bee cor-rup-

corrupted, that the prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and partialitie, as others be.

What remedie is, if the sentence be thought vniustly giuen.

CHAP. 2.

IN causes ciuill there is an other order: for if after the matter be pleaded to the issue, & the twelue men thereupon impaneled, the euidence brought & pleaded before them on both the parties, the twelue seeme to be partiall, and to haue giuen sentence contrary to the euidence shewed vnto them: the partie greeued may bring against them, and the party for whom the sentence is giuen, a writ of attaint: and whereas before vpon the first quest commonly they all be yeomen, now vpon this attaint must goe xxiiii. gentlemen dwelling within the shire, and twelue at the least of the hundreth where the land lieth. The matter is pleaded againe before the same Iudges. The partie defendant is not onely now hee who claimeth the land, but also all and euerie of the yeomen, who by their verdict did giue it him.

There must in the attaint no more euidence bee brought in, but only that which was brought in and alledged before ỳ first enquest. And if this second enquest of foure and twenty gentlemen doe abiudge as the first did, the plaintife shall not onely lose the land, but also pay a fine to the Prince, and damages to the partie. If thys second enquest dos finde that the first enquest haue gone partially, and against the euidence brought in before them, the first Enquest is called attainted,

No more euidence on the behalfe of the plaintife, but of the defendant there may.

The ſtatute of 23. Henry 8. doth not aboliſh cõmon lawe, but giueth a more profitable for the plaintife.

and accounted as periured and infamed. The Prince had before the waſte of all their landes and poſſeſſions with other punithments, which at this preſent by a lawe made by Parlement in the time of king Henry the eyght is aboliſhed, and nowe by that lawe or act of Parlement, beſide other punithment, each of the queſt attainted paieth vnto the Prince and partie, fine pound, if it be vnder fortie poundes: and if aboue, then twentie pounds. Attaints be very ſeldome put in vre, partly becauſe the Gentlemen will not mæt to ſlander and deface the honeſt yeomen their neighbours: ſo that of a long time, they had rather pay a meane fine than to appeare and make the enqueſt. And in the meane time they will intreate ſo much as in them lyeth the parties to come to ſome compoſition & agrément among themſelues, as lightly they doe, except either the corruption of the enqueſt be too euident, or the one partie is too obſtinate and head-ſtrong. And if the Gentlemen do appeare, gladlier they will confirme the firſt ſentence, for the cauſes which I haue ſaid, than goe againſt it. But if the corruption be too much euident, they will not ſtick to attaint the firſt enqueſt: yet after the Gentlemen haue attainted the yeomen, if before the ſentence bée giuen by the Iudge (which ordinarily for a time is deferred) the parties be agréed, or one of them be dead, the attaint ceaſeth.

If at any time before the ſentence be giuen or put in execution, there be founde ſome ſuch errour in the writ, in the proceſſe, or forme (as our lawyers be very preciſe and curious of their formes) that it may be reuocable, it is brought afreſh to the diſputatiõ by a writ of errour, and all that is doone reuerſed. But that is common to all other Countries, where the ciuill lawe is vſed, which they call *de nullitate proceſſus*, and ſeruеth both in England and in other places aſwell in cauſes

criminall

criminall, as ciuill. Other kinde of appellation to reuoke processes, and to make them of short, long: of long, infinite: which is vsed by the ciuill law, we haue not in our common law of England. By supplication to the Prince, and complaint to the Chauncellor vppon suppofall of losse, or lacke of euidence, or too much fauour in the Countrey, and power of the aduersarie, there is in our country as well as theirs both stopping and prolonging of Iustice. For what will not busie heades and louers of trouble neuer being satisfied inuent in any Countrey to haue their desire, which is to vexe their neighbours, & to liue alwaies in disquiet? When euen permitted of God like flies, and lice, and other vermine, to disquiet them who woulde employ themselues vppon better busines and more necessary for the Common-wealth. These men are hated, and feared of their Neighbours, loued and ayded of them which gaine by processe, and ware fat by the expence and trouble of other. But as these men ordinarily spend their owne thrift, and make others against their wills to spend theirs: so sometime being throughly knowne, they doe not onely line by the losse like euill husbands, but beside rebuke and shame, by the equity of the prince and Courts soueraigne, they come to be extraordinarily punished, both corporally, and by their purse, which thing in my mind is as royall and princely and act, and so beneficiall to the Common-wealth, as in so small a matter a king or queene can doe, for the repose and good education of their subiects.

Of that which in England is called appeale, in other places accusation.

CHAP. 3.

IF any man hath killed my father, my ſon, my wife, my brother, or next kinſman, I haue choice to cauſe him to be indited, by giuing information to ỳ enqueſt of enquirie, (although he chaunce to eſcape the Conſtable or Iuſtices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or elſe within a yeere and a day I may enter my appeale, that is, mine accuſation againſt him: If I began firſt to purſue him by information or denunciation to enditement, I am now no party but the Prince, who for his dutie to God and his common-wealth and ſubiects, muſt ſée iuſtice executed againſt all malefactors and offenders againſt the Peace, which is called God and his, and doth in ſuch maner as I haue ſaid before. If I leaue that and will appeale, which is, proſer my accuſation againſt him who hath doone to mee thys iniurie, the defendant hath thys aduantage, to put himſelfe to the Iurie, which is, to that which before is ſaid to haue that iſſue and trial by God and his countrey, whereof the faſhion I haue at large declared: or to demaund the triall by battle, wherein both the parties muſt either themſelues in perſon, or elſe finde other for them, who be called in our Lawe Champions, or Campions, ſome dooth interprete them δίκαιοι, because they be men choſen, fat, luſtie, fit to the feate, or as the French doe terme them Adroicts aux armes. which ſhall fight it out by μονομαχία. or as nowe they doe call

In appeale the battell is tryed by the parties only, and in writs of right by champions.

call it duellum, or the Campe, which shall haue all thinges equall: but according as Mars giueth the victorie, so the Law is iudged, the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die.

So is it not in the graund assise, for the *reus* or defendant is onely in danger of death. Short it is, from day to Sunne set, the quarrell is ended, or sooner who hath the better fortune. This seemeth very militarie (as in manner all our policie of England) and to haue as small to doe with Lawyers as with Philitions, quickly to dispatch, and for the rest to returne, each man to his businesse, to serue the Commonwealth in his vocation. The Popes of Rome, and men of the church who of long time haue had dominion in our consciences, and woulde bring thinges to a more moderation, haue much detested this kinde of triall and iudgement, as reason is euery man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they (I say) much mislike manie thinges doone necessarie in hote policie.

At the least a Common-wealth militarie must aduenture many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoeuer it be, thys kinde of tryall a long time hath not beene vsed. So that at this time wee may rather seeke the experience of it out of our histories of time passed, then of anie viewe or sight thereof, of them which are nowe aline. Neuertheless the Law remaineth still, and is not abolished, and if it shall chance the murtherer or man-slear (the one we call him that lieth in waite, and as they terme it in French de guet appendant, killeth the man, the

other who by casuall falling out and sodaine debate and choler doth the same which way soeuer it be doone) if hee that hath slaine the man, hath his pardon of the Prince, as occasion or the fauour of the Prince may so present that he may haue it, yet the partie greeued hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale and priuate reuenge, which is not denied him. And if the defendant eyther by great assise or by battle be conuinced vpon that appeale, hee shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the lawes of our realme to iustice and to the punishment of blood violently shed.

The battle or Iurie, is at the election of the defendant.

Of the Court of Starre-chamber.

CHAP. 4.

THere is yet in England another Court, of the which that I can vnderstand there is not the like in any other country. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those dates when the lawe is exercised in Westminster hall, which as I haue said, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridaies, & Wednesnes, and the next day after that the Terme doth ende) the Lorde Chauncellor, and the Lordes, and other of the Priuie Counsell, so manie as will, and other Lordes and Barons which be not of the priuie Counsell, and be in the towne, and the Iudges of England, specially the two chiefe Iudges, from ix. of the clock till it be xi. doe sit in a place which is called the Starre-chamber, eyther because it is full of windowes, or because at the first all

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the roofe thereof was decked with images of ſtarres gilted. There is plaints heard of riots. Riot is called in our Engliſh terme or ſpæch, where anie number is aſſembled with force to doe anything: and it had the beginning, becauſe that our beeing much accuſtomed either in forraine warres, in Fraunce, Scotland, or Irelande, or beeing ouer-much exerciſed with ciuill warres within the Realme (which is the fault that falleth ordinarily amongſt bellicous nations) whereby menne of warre, Captaines and Souldiours become plentifull: which when they haue no externe ſeruice wherewith to occupie their buſie heads and hands accuſtomed to fight and quarrell, muſt nedes ſæke quarels and contentions amongſt themſelues, and become ſo ready to oppreſſe right among their neighbours, as they were wont before with praiſe of manhod to be in reſiſting iniurie offered by their enemies. So that our Nation vſed hereunto, and vpon that more inſolent at home, and not eaſie to be gouerned by Law & politicke order, men of power beginning many fraies, and the ſtronger by factions and parties offering too much iniurie to the weaker, were occaſions of making good laws. Firſt of reteiners, that no man ſhoulde haue aboue a number in his Liuerie or retinue: then of the enquirie of routes and riots at euery Seſſions, and of the lawe whereby it is prouided that if any by force or by riot enter vpon any poſſeſſions, the Juſtices of the peace ſhall aſſemble themſelues, and remoue the force, and within certaine time enquire thereof.

And further, becauſe ſuch things are not commonlie done by meane men, but ſuch as be of power and force, & be not to be dealt withall of euery man, nor of meane gentlemen: if the riot be found & certified to the kinges Counſell, or if otherwiſe it bee complained of, the partie is ſent for, and hee muſt appeare in the Starre-chamber. Sent for by Sub pœna.

chamber, ſéeing (except, the preſence of the Prince only,) as it were the maieſtie of the whole Realme before him, béeing neuer ſo ſtoute, hee will be abaſhed: and beeing called to aunſwere (as hee muſt come of what degrée ſoeuer hee be) hée ſhall bee ſo charged with ſuch grauity, with ſuch reaſon, and remonſtrance, and of thoſe chiefe perſonages of England, one after an other handling him on that ſort, that what courage ſoeuer hée hath, his heart will fall to the grounde, and ſo much the more, when if he make not his aunſwere the better, as ſeldome he can ſo in open violence, hee ſhall be commaunded to the Fleete, where he ſhal be kept in priſon in ſuch ſort as theſe Iudges ſhall appoynt him, lie there till hée bee wearie aſwell of the reſtraint of his libertie, as of the great expences, which hee muſt there ſuſtaine, and for a time be forgotten, whiles after long ſuite of his frendes, hee will be glad to be ordered by reaſon. Sometime as his deſerts be, hee payeth a great fine to the Prince, beſides great coſtes and dammages to the partie, and yet the matter wherefore hée attempteth thys riot and violence, is remitted to the Common lawe. For that is the effect of thys Court, to bridle ſuch ſtoute Noble men, or Gentlemen which would offer wrong by force to any manner men, and cannot bee content to demaund or defend the right by order of Lawe. This Court beganne long before, but tooke great augmentation and authoritie at that time that Cardinall *Wolſey* Archbiſhop of Yorke was Chauncelor of England, who of ſome was thought to haue firſt deuiſed that Court, becauſe that hee after ſome intermiſſion by negligence of time, augmented the authoritie of it, which was at that time maruellous neceſſarie to doe, to repreſſe the inſolencie of the Noble men and gentlemen of the North partes of England, who béeing farre from the King and the

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ſcate of iuſtice made almoſt as it were an ordinarie warre among themſelues, and made their force their Lawe, banding themſelues with their Tenaunts and ſeruaunts, to doe or reuenge iniurie one againſt another as they liſted. This thing ſeemed not ſupportable to the noble Prince king Henry the eight: and ſending for them one after another to his Court, to aunſwere before the perſons before named, after they had had remonſtrance ſhewed them of their euill demeanour, and bene well diſciplined as well by words, as by fleeting a while, and thereby their purſe and courage ſomewhat aſſwaged, they beganne to range themſelues in order, and to vnderſtande that they had a Prince who would rule his Subiects by his lawes and obedience. Sith that time this Court hath bene in more eſtimation, and is continued to this day in manner as I haue ſaid before.

The Iudges of this Court are the Lord Chauncelour, the Lord Treaſurer, all of the Queenes Maieſties Counſell, the Barons of this Land.

The officers therein, are a Clarke, three Atturnies, an Examinour.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The three Aturnies are for the plaintife, and for the defendant to frame their complaints, and anſwers, and make their matter apt to be heard for the Lords.

The Examinour taketh the depoſitions of the witneſſes of both ſides, to the proofe or diſproofe of the cauſe.

The order of proceeding to iudgement is by aſſent of voyces, and open yeelding their minde in Court, the maior part being preferred for ſentence.

The puniſhment moſt vſuall, is impriſonment, pillorie, a fine, and many times both fine and impriſon-

ment.

The proceſſe is a ſubpena, an attachment, a proclamation of rebellion, and a commiſſion of rebellion.

The ſubpena is in maner of a libell or precept.

The Proclamation and commiſſion of rebellion ſerueth when the party is ſtubborne, hauing made contempt, and commeth not in by the former proceſſe.

The Meſſengers of this Court are the warden of the Fleete: or the Sergeants at Armes.

The matters belonging moſt commonly, are by ſtatutes, as is taking away of Maides within age againſt their parents or gardians will. See Anno.4.& 5.Phil. & Mariæ cap 8. All notable forgeries, counterfetting letters, or priuy tokens. See Hen.Anno.33.cap.1.An.5. Eliz.cap.11. ſlandering of nobles, and ſeditious newes. See R. 2. Anno.2.Cap. 5. Anno. 1. & 2. Phil. & Mariæ Cap.3, Anno. 2.3.Eliz. Cap. 7. All notable Ryots and vnlawfull aſſemblies. See Anno 1.Eliz.cap.17. And all the titles of Ryots in Raſtals abridgement, all notable deceits, and all kind of couſonage, &c.

Of the Courts of Wardes and Liueries.

CHAP. 5.

HE whom we call a Ward in England, is called in Latine *pupillus*, and in Greek παιδίον. The gardian is called in Latine *tutor*, in Greeke ἐπίτροπος.

A Ward or Infant is taken for a childe in baſe age, whoſe father is dead. The Romaines made two diſtinctions *pupillum & minorem*, the one to xiiij. yeare old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, ſo *minor* had *curatorem* till he came

to

to the age of xxi. These tutors or curators were accountable for the reuenues of the pupils minors lands, and great prouision, and many lawes & orders be made for them in the bookes of the ciuill lawe, for rendring iust and true accounts. So that to be a gardian or tutor was accounted among them to be a charge, are trouble, a thing subiect to much encumbrance and small profit, so that diuers means were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a ward. For the Lord of whom the Ward doth hold the land, so sone as by the death of the Father the child falleth Ward vnto him, he seaseth vpon the bodie of the Ward, and his lands, of which (so that he doth nourish the Ward) hee taketh the profites without accounts, and beside that, offering to his Ward conenable marriage without dispergment before the age of xxi. yeares if it be a man, of fourteene if it be a woman. If the Ward refuse to take that marriage, he or she must pay the value of the marriage, which is commonly rated according to the profit of his lands. All this while I speake of that which is called in French garde noble, that is, of such as holde lands of other by Knights seruice, for that is another kinde of seruice, which we call in French gard returier, we call it gard in socage, that is of such as doe not holde by Knight seruice, but by teture of the plough. This Wardship falleth to him who is next of the kinne, and cannot inherite the land of the Ward, as the Vncle by the Mothers side, if the Land doe discend by the Father, and of the Fathers side, if the land discend by the Mother. This gardian is accountable for the reuenues and profites of the Land, as the tutor by the ciuill law to the warde or pupil so sone as he is of full age.

Guardian in Chiualry, & gardian in Socage.

The man is not out of Wardship by our lawe till xxi. yeare old, from thence he is reckoned of full age, as

well as in the Romaine Lawes at xxb. The woman at xiiij. is out of ward, for she may haue a husband able to doe Knights seruice, say our Bookes. And because our wiues be in the power (as I shall tell you hereafter) of their husbands, it is no reason, shee should be in two diuers garbs.

Many men doe esteeme this wardship by Knights seruice very vnreasonable and vniust, and contrarie to nature, that a Free-man and Gentleman should bee bought and sold like an Horse or an Oxe, and so change Gardians as Maisters and Lords: at whose gouernement not onely his body but his lands and his houses should be, to be wasted and spent without accounts, and then to marry at the will of him, who is his naturall Lorde, or his will who hath brought him to such as hee like not peraduenture, or else to pay so great a raunsome. This is the occasion they say, why many Gentlemen be so euill brought vp touching vertue and learning, and but onely in daintinesse and in pleasure: and why they be married very young, and before they bee wise, and many times doe not greatly loue their wiues. For when the Father is dead, who hath the naturall care of his Childe? not the Mother, nor the Vncle, nor the next of kinne, who by all reason would haue most naturall care to the bringing vp of the Infant and *minor*, but the Lorde of whom hee holdeth his Lande in Knights seruice, be it the King or Queene, Duke, Marquesse, or any other, hath the gouernment of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as hauing so many, must needes giue or sell his wardes away to other, and so hee doth. Other doe but seeke which way they may make most aduantage of him, as of an Oxe, or other Beast. These all (say they) haue no naturall care of the Infant, but of their owne gaine, and especially

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the buier will not ſuffer his warde to take anie great paines, eyther in ſtudie, or any other hardneſſe, leaſt hee ſhould be ſicke and die, before hee hath married his daughter, ſiſter, or couſin, for whoſe ſake hee bought him: and then all his money which hee payde for him ſhould be loſt. So he who had a Father, which kept a good houſe, and had all things in order to maintaine it, ſhall come to his owne, after hee is out of wardſhippe, woods decayed, houſes fallen downe, ſtocke waſted and gone, Lands lent forth and plowed to the barren, and to make amends, ſhall pay yet one yeares rent for releſe, and ſue ouſter le main, beſide other charges, ſo that not of many yeares, and peraduenture neuer hee ſhall be able to recouer, and come to the eſtate where his Father left it. This as it is thought was firſt granted vpon a great extreamity to King Henry the 3. for a time vpon the warre which hee had with the Barons, and afterward increaſed, and multiplied to more and more perſons and greuances, and will be the decay of the nobility and liberty of England. Other againe ſay, the ward hath no wrong, for eyther his father purchaſed the Lande, or it did not diſcend vnto him from his auncеſtors with this charge. And becauſe hee holdeth by Knights ſeruice, which is in armes and defence, ſeeing that by age he cannot doe that whereto he is bound by his Land, it is reaſon hee aunſwere that profite to the Lorde, whereby hee may haue as able a man to doe the ſeruice. The firſt Knightes in Rome, thoſe that were choſen *equites Romani* had *equum publicum* on which they ſerued, and that was at the charge of Widowes and Wards, as appeareth by Titus Liuius, becauſe that theſe perſons could not doe bodily ſeruice to the Common-wealth. Wherefore this is no newe thing, but thought reaſonable in that moſt wiſe common-wealth, and to the prudent King Seruius Tullius,

But the lord ſhall be puniſhed for the waſt, by loſſe of the ward: or treble damages, if that ſuffice not.

As for the education of our common-wealth, it was at the first militaire, and almost in all things the scope and deseigne thereof is militaire. Yet was it thought most like, that Noble men, good Knightes, and great Captaines, would bring vp their Wardes in their owne feates and vertues, and then marry them into like race and stocke, where they may finde and make friendes who can better looke to the education or better skill of the bringing vp of a Gentleman, than hee who for his higher Nobilitie hath such a one to holde of him by Knights seruice, or would doe it better than he that lweketh or may claime such seruice of his Ward, when age and yeares will make him able to doe it. That which is sayde that this manner of Wardshippe began in the time of King Henry the third, cannot seeme true. For in Normandie and other places of Fraunce the same order is.

And that Statute made in King Henry the thirds time touching Wardes, to him that will wey it well, may seeme rather a qualification of that matter, and an argument that the fashion of Wardship was long before: but of this matter an other time shall be more conuenient to dispute. This may suffice to declare the manner of it.

The Judge in this Court is the Maister of the Wardes.

Officers are the Attourney of the Wardes for the Quéene.

The Surueyor, the Auditor, the Treasurer, the Clark, two common Atturnies, inferiour officers, also Messengers, and Pursuiuants.

The Attourney for the Wardes is alwayes for the Quéenes right, and assistant with the Maister of the Wards.

The Surueyor is he that hath the alowing of euery

Liuerie

Liuerie that is ſued out.

The Auditor taketh the account, and cauſeth proces to be made.

The Treaſurer receaueth the mony due to her Maieſtie.

The Clark is writer of the Records, and writer of the decrees, proceſſes, and orders of the Court.

The matters of this Court are all benefits that may come vnto her Maieſtie, by guard, by marriage, prenuer, ſeaſon, and releaſe.

The generall proceſſe in this Court is a commiſſion, a proceſſe in manner of a proclamation, warning the party or parties to appeare before the maiſter of the wards. More ſpeciall proceſſe belonging to this Court, are a Diem clauſit extremum, a Deuenerunt, a melius inquirendum, a Datum eſt nobis intelligi, a Quæ plura. Of the nature of theſe, ſee Stanfords booke of the Kings prerogatiue.

Out of this Court are the Liueries ſued, and committed to the Clarks of the Petty bagge, officers in the Chauncerie.

When the heire hath proued his age, and ſued his Liuerie, then he muſt doe homage to that is the Deputy of the Prince for that purpoſe, & then muſt pay a fine or fee to the Lord priuy Seale.

The Dutchie Court.

CHAP. 6.

THe Duchie Court of Lancaſter is alſo the Queenes Court of Record. In it are holden all pleas real and perſonall, which concerne any of the Dutchie Lands, now in her Maieſties hands and parcell of her crowne but

but ſeuered in Court and iuriſdiction.

The Iudge in this Court is the Chancelour aſſiſted by the Attourney of the Dutchie for the Quæne, the Clarke of the Court, diuers Surueyors, two common Attourneies, diuers Auditors, two aſſiſtants, the Sergeant of her Maieſtie.

The Chauncelour is a Iudge of the Court, to ſée iuſtice adminiſtred betwæne her Maieſtie and her Subiects, and betwæne party and party.

The Attourney is to maintaine the Quænes right, and is aſſiſtant to the Chauncelour, and ſheweth him what the law is.

The Clarke kéepeth the Roles and Records, and maketh the Proceſſe.

The Surueiors are diuers, one more principal: they ſurney the Quænes lands within the Dutchy.

The Auditors are diuers: one more principall, they are to account and make the order of the receits within the Dutchie.

The common Attourneies are for the ſuitors that haue cauſe in action within the Court.

The Aſſiſtants are two Iudges at the Common law that are to aid them in difficult points of the law.

The Sergeant for the Quæne, is a learned Counſailor, appointed to be of her Maieſties Counſell for her right.

There is alſo belonging to this Court a Vice-chancelour, that ſerueth for the County Palatine of Lancaſter, he maketh all originall proceſſes within his libertie, as doth the Lord Chauncelour of England for the Chauncerie.

The Proceſſe of the County Palatine, is a *Sub pœna*, as in the Chauncerie.

Of

The Court of Requests.

CHAP. 7.

THis Court is the Court wherein all ſutes made to her Maieſtie by way of ſupplication or petition are heard and ended, neither ſhoulde it holde plea of any other matters then ſuch. And this is called the poore mans Court, becauſe there hee ſhould haue right without paying any money: and it is called alſo the Court of conſcience.

The Iudges in this Court are the Maiſters of Requeſts, one for the common lawes, the other for the ciuill lawes.

The Officers in this court, are the Regiſter, the Examinor, three Atturneis, one meſſenger or Purſuiuant.

The Examinor is he that appoſeth the witneſſes by oath, and recordeth their depoſitions.

The Atturneis ſerue for the plaintife and defendant to frame their complaints and aunſwers.

The Purſuiuant is an officer in this court, to bring any man before the Iudges whom they ſhall name.

The matters in this Court at this day, are almoſt all ſutes that by colour of equitie or ſupplication made to the Prince, may be brought before them: properly all poore mens ſutes, which are made to her Maieſtie by ſupplication.

The Proceſſes in this Court, are a priuie ſeale, proclamation of rebellion.

The nature of theſe Proceſſes is, as was ſaid before in the Court of Starre-chamber.

Of wiues and marriages.

CHAP. 8.

THe wiues in England be as I ſaid *in poteſtate maritorum*, not that the huſband hath *vitæ ac necis poteſtatem*, as the Romans had in the old time, of their children, for that is only in the power of the Prince, and his lawes, as I haue ſaid before, but that whatſoeuer they haue before mariage, as ſone as mariage is ſolemniſed, is their huſbands, I meane of mony, plate, iewels, cattaile, & generally all moueables. For as for land and heritage followeth the ſucceſſion, and is ordered by the law, as I ſhall ſay hereafter: and whatſoeuer they get after marriage, they get to their huſbands. They neither can giue nor ſell any thing either of their huſbandes, or their owne. Theirs no moueable thing is by the lawe of England *conſtanti matrimonio*, but as *peculium ſerui aut filij-familias*: and yet in moueables at ỹ death of her huſband ſhe can claime nothing, but according as hee ſhall will by his Teſtament, no more then his ſonne can: all the reſt is in the diſpoſition of the executors, if he die teſtate. Yet in London and other great citties they haue that lawe and cuſtome, that when a man dieth, his goods bee deuided into three parts. One third is imployed vpon the burial and the bequeaſtes, which the Teſtator maketh in his teſtament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to bee deuided among them. So that a man there can make teſtament but of one third of his goodes: If hee die inteſtate, the funerals deducted, the goodes be equally deuided betweene the Wife and the children.

By

By the common Law of England if a man die intestate, the Ordinarie (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendarie, by priuiledge and prescription, doth commit the administration of the goods to the Widdow or the childe, or next kinsman of the dead, appointing out portions to such as naturally it belongeth vnto, and the Ordinary by common vnderstanding, hath such grauitie and discretion as shal be for so absolute an authoritie for the most part, following such deuision as is vsed in London, eyther by thirds or halfes. Our forefathers newlie conuerted to the Christian Fayth, had such confidence in their Pastors and instructors, and toke them to be men of such conscience, that they committed that matter to their discretion: and belike at the first they were such as would seeke no priuate profite to themselues thereby: that beeing once ordayned hath still so continued. The abuse which hath followed was in part redressed by certaine acts of Parlement made in the time of King Henrie the eyght, touching the probate of Testaments, committing of administration & mortuaries. But to turne to the matter which we nowe haue in hande, the wife is so much in the power of her husband, that not onely her goodes by marriage are streight made her husbandes, and she looseth all her administration which she had of them: but also where all English men haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the Font, the surname is the name of the gentilitie and stocke which the Sonne doth take of the Father alwaies, as the olde Romans did, our Daughters so sone as they be married lose the surname of their Father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their

familie into another. So that if my wife was called before Philip Wilford by her owne name and her Fathers surname, so sone as she is married to me, she is no more called Philip Wilford, but Philip Smith, and so must she write and signe: and as shee changeth husbands, so she changeth surnames, called alwayes by the surname of her last husband. Yet if a woman once marrie a Lord or a Knight, by which occasion she is called my Lady, with the surname of her husband, if hee die, and she take a husband of a meaner estate, by whō she shall not be called Ladie (such is the honour wee doe give to women) she shall still be called Ladie with the surname of her first husband, and not of the second.

Yet she is no Ladie by the common law, although so called of curtesie.

I thinke among the olde Romans those marriages which were made *per coemptionem in manum*, and *per æs* and *libram* made ỳ wife *in manu & potestate viri*, whereof also we had in our old lawe and ceremonies of marriage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church dore was given of the Father, or some other man of the next of her kinne into the handes of the husband, and he layd downe golde and silver for her vppon the Booke, as though he did buy her, the Priest belike was in stéd of Lipripeus: our marriages be estéemed perfect by the law of England, when they be solemnized in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh both the husband and the wife capable of all the benefites which our Law doth give vnto them and their lawfull children. In so much that if I marry the Widdow of one lately dead, which at the time of her husbands death was with childe, if the childe be borne after marriage solemnized with mée, thys childe shal be my heire, and is accounted my lawfull sonne, not his whose childe it is indeede: so precisely wee doe take

take the letter where it is ſaid, *Pater eſt quem nuptiæ demonſtrant*. Thoſe wayes and meanes which Iuſtinian doth declare to make baſtards to be lawfull children, muliers or rather melieurs (for ſuch a Terme our lawe vſeth for them which be lawfull children) be of no effect in England: neyther the Pope, nor Emperour, nor the Prince himſelfe neuer could there legitimate a baſtard to enioy any benefite of our Law, the Parliament hath onely that power.

Although the wife be (as I haue written before *in manu & poteſtate mariti*, by our Lawe, yet they be not kept ſo ſtraite as in a mew, and with a garde as they be in Italy and Spayne, but haue almoſt as much libertie as in Fraunce, and they haue for the moſt part all the charge of the houſe and houſholde (as it may appeare by Ariſtotle and Plato, the wiues of the Grekes had in their time) which is indede the naturall occupation, exerciſe, office, and part of a wife. The huſband to meddle with the defence eyther by lawe or force, and with all forren matters which is the naturall part and office of the man, as I haue written before. And although our Lawe may ſeme ſomewhat rigorous toward the wiues: yet for the moſt part they can handle theyr huſbandes ſo well and ſo dulcely, and ſpeciallie when their huſbands be ſicke, that where the lawe giueth them nothing, their huſbandes at their death of their good will giue them all. And few there be that be not made at the death of their huſbands eyther ſole or chiefe executrices of his laſt will and teſtament, and haue for the moſt part the gouernment of the Children and their portions: except it be in London, where a peculier order is taken by the Citty much after the faſhion of the ciuill Law.

All this while I haue ſpoken onely of moueable goods. If the wife be an inheritrix and bring land with

her to the marriage: that land descendeth to her eldest sonne, or is deuided among her daughters. Also the maner is, that the land which the wife bringeth to the marriage, or purchaseth afterwardes, the husband cannot sell nor alienate the same, no not with her consent, nor shee herselfe during the marriage, except that shee be sole examined by the Iudge at the common law: and if he haue no childe by her and she die, the land goeth to her next heires at the common lawe: but if in the marriage hee haue a childe by her, which is heard once to cry, whether the childe liue or die, the husband shall haue the vsufruite of her Landes, (that is the profit of them during his life) and that is called the curtesie of England.

It is auoidable after the husbandes death, except it be for xxi. yeeres or three liues, according to the statute, or except they leuie a fine.

Likewise if the husband haue any land, either by inheritance descended, or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one third part of his lands. That is, shee shall hold the one third part of his landes during her life as her dowrie, whether he hath child by her or no. If he hath any children, the rest descendeth streight to ỹ eldest: if he hath none, to the next heire at the common law: and if shs mislike the deuision, shee shall aske to be indowed of the fairest of his landes to the third part.

This which I haue written touching marriage and the right in moueables and vnmoueables which commeth thereby, is to be vnderstood by the common lawe when no priuate contract is more particularlie made. If there be any priuate pacts, couenants and contracts made before the marriage betwixt the husband and the wife, by themselues, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made: And thys is enough of wifes and marriage.

Of

Of Chyldren.

CHAP. 9.

OVr chyldren be not *in poteſtate parentum*, as the chyldren of the Romans were: but as ſone as they be *puberes*, which we call the age of diſcretion, before that time nature doth tel they be but as it were *partes parentũ*, that which is theirs they may giue or ſel, and purchaſe to themſelues either lands and other moueables the father hauing nothing to do therewith. And therfore *emancipatio* is cleane ſuperfluous, we know not what it is. Likewiſe *ſui hæredis* complaints, *de inofficioſo teſtamento* or *præteritorũ liberorum non emancipatorum*, haue no effect nor vſe in our law, nor we haue no maner to make lawfull Chyldren but my marriage, and therefore we know not what is *adoptio*, nor *arrogatio*. The Teſtator diſpoſeth in his laſt will his moueable goods freely as he thinketh meete and conuenient without controlement of wife or chyldren. And our teſtaments for goods moueable be not ſubiect to the ceremonies of the ciuill Law, but made with all libertie and freedome, and *iure militari*. Of landes, as yee haue vnderſtode before, there is difference: For when the owner dieth, his land deſcendeth onely to his eldeſt ſonne, all the reſt both ſonnes and daughters haue nothing by the common lawe, but muſt ſerue theyr eldeſt brother if they will, or make what other ſhift they can to liue: except that the Father in his life time do make ſome conueiance and eſtates of part of his land to their vſe, or elſe by deuiſe, which word amongſt our lawiers dooth betoken a teſtament written, ſealed and deliuered in the life time of the Teſtator before witneſſe: for without thoſe ceremonies a bequeaſt of landes is not

auailable,

auaileable. But by the common Law, if he that dieth had no ſonnes but daughters, the land is equally deuided among them, which portion is made by agræment or by lot. Although (as I haue ſaid) ordinarily and by the common Lawe, the eldeſt ſonne inheriteth all the lands, yet in ſome Countries all the ſonnes haue equall portion, and that is called gauelkind, and is in many places in Kent. In ſome places the youngeſt is ſole heire: and in ſome places after another faſhion. But theſe being but particuler cuſtomes of certaine places, and out of the rule of the common law, doe little appertaine to the diſputation of the policy of ỹ whole Realm, and may be infinite. The common-wealth is iudged by that which is moſt ordinarily and commonly done thꝛough the whole Realme.

Of Bondage and Bondmen.

CHAP. 10.

AFter that we haue ſpoken of all the ſoꝛts of frée-men accoꝛding to the diuerſity of their eſtates and perſons, it reſteth to ſay ſome-what of bondmen, which were called *ſerui*, which kind of people and the diſpoſition of them and about them doth occupy the moſt part of Iuſtinians Digeſtes, and Code. The Romaines had two kinds of bondmen, the one which were called *ſerui*, and they were eyther which were bought foꝛ money, taken in warre, left by ſucceſſion, oꝛ purchaſed by ſome other kind of lawfull acquiſition, oꝛ elſe boꝛne of their bond women, and called *verne*: all thoſe kind of bondmen be called in our law villains in groſſe, as ye would ſay immediatly bond to the perſon and his heires. Another they had (as appeareth in Iuſtinians time) which they called *adſcriptitij glebæ* oꝛ *agri cenſiti*. Theſe

These were not bond to the person, but to the manno⁊ o⁊ place, and did follow him who had the manno⁊s, and in our law are called villaines regardantes, fo⁊ because they be as members, o⁊ belonging to the manno⁊ o⁊ place. Neither of the one so⁊t no⁊ of the other haue we any number in England. And of the first I neuer knew any in the Realme in my time: Of the second, so fewe there be, that it is not almost wo⁊th the speaking, but our lawe doth acknowledge them in both those so⁊ts.

Manumission of all kinde of villaines o⁊ bond-men in England, is vsed and done after diuers so⁊tes, and by other, and mo⁊e light and easie meanes than is p⁊escribed in the ciuill law: and being once manumitted, he is not libertus manumittentis, but simply liber: how-beit, since our Realme hath receiued the Chri∫tian Religion, which maketh vs all in Chri∫t b⁊ethren, and in respect of God and Chri∫t, conseruos, men beganne to haue conscience to hold in captiuitie, and such extreme bondage, him whom they must acknowledge to be his b⁊other, and as wee vse to terme him Chri∫tian: that is, who loketh in Chri∫t, and by Chri∫t, to haue equall po⁊tion with them in the Gospell and salnation.

Vpon thys scruple, in continuance of time, and by long succession, the holy Fathers, Mo⁊kes and Friers, in their confession, and specially in their extreame and deadly sicknesses, burdened the consciences of them whom they had vnder their handes: so that tempo⁊all men by little and little, by reason of that te⁊⁊o⁊ in they⁊ conscience, were glad to manumitte all their villaines: but the said holy Fathers, with the Abbots and P⁊io⁊s, did not in like so⁊t by theirs, fo⁊ they had also conscience to empouerish and dispoyle the Churches so much as to manumit such as were bond to their Churches, o⁊ to the manno⁊s which the Church had gotten, and so

kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peace of money) manumitted theirs, partly for argent, partly for slanders, that they semed more cruell than the temporality: after the Monasteries comming into temporall mens hands, haue bene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly, nor in that sort as the bondmen at the Romaine ciuill law, as appeareth by their comedies: nor as in Greece, as appeareth by theirs; but they were suffered to enioy coppy-hold land, to gaine and get as other seruants, that now and then their Lords might fleese them, and take a peice of money of them, as in Fraunce the Lords doe taile them whom they call their Subiects, at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I think both in France and England, the change of Religion, to a more gentle, humane, and more equall sort, (as the Christian Religion, is in respect of the Gentiles,) caused this olde kinde of seruile seruitude and slauery, to be brought into that moderation, for necessity, first to villaines regardants, and after to seruitude of lands and tenures, and by little and little finding out more ciuil and gentle meanes, and more equall to haue that done which in time of heathenesse, seruitude, or bondage did, they almost extinguished the whole. For although all persons Christians be brethren by baptisme in Jesus Christ, and therefore may appeare equally free, yet some were, and still might be christened being bond and serue, and whom as the baptisme did find, so it did leaue them, for it changeth not ciuil lawes nor compacts amongst men which be not contrary to Gods lawes, but rather maintaineth them by obedience.

Which seeing men of good conscience hauing that scruple

ſcruple whereof I wrote before, haue by little and little found meanes to haue and obtaine the profit of ſeruitude and bondage which gentility did vſe, and is vſed to this day amongſt Chriſtians on the one part, & Turks and Gentiles on the other part, when warre is betwixt them, vpon thoſe whom they take in battaile. Turkes and Gentiles I call them, which vſing not our Lawe, the one beléeueth in one God, the other in many Gods, of whom they make images. For the lawe of Iewes is well enough knowne, and at this day ſo far as I can learne, amongſt all people Iewes be holden as it were in a common ſeruitude, and haue no rule nor dominion as their owne prophetes doe tell, that they ſhould not haue, after that Chriſt promiſed to them, was of them refuſed: for when they would not acknowledge him, obſtinately forſaking their helpe in ſoule for the life to come, and honour in this world for the time preſent, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promiſe of the Prophets fructified in vs which be Gentiles, and brought forth this humanity, gentlenes, honour, and godly knowledge which is ſene at this preſent. But to returne to the purpoſe.

This perſwaſion I ſay of Chriſtians, not to make nor kéepe his brother in Chriſt, ſeruile, bond, and vnderling for euer vnto him, as a beaſt rather than as a man, and the humanitie which the Chriſtian Religion dooth teach, hath engendred through Realmes (not néere to Turkes and Barbarians) a doubt, a conſcience, and ſcruple to haue ſeruaunts and bondmen: yet neceſſity on both ſides, of the one to haue helpe, on the other to haue ſeruice, hath kept a figure or faſhion thereof. So that ſome would not haue bondmen, but adſcripticij glebæ, and villaines regardant to the ground,

to the intent their ſeruice might be furniſhed, and that the countrey beeing euill, vnwholſome, and otherwiſe barren, ſhould not be deſolate. Others afterward found out the waies and meanes, that not the men, but the Land ſhould be bond, and bring with it ſuch bondage and ſeruice to him that occupieth it, as to carry ẏ Lords dung vnto the fieldes, to plowe his ground at certaine dayes, ſowe, reape, come to his Court, ſweare fayth vnto him, and in the end to hold the land but by copie of the Lords Court rolle, and at the will of the Lord.

This tenure is called alſo in our lawe, villaine, bond, or ſeruile tenure: yet to conſider more deepely, all land, euen that which is called moſt free Land, hath a bondage annexed vnto it, not as naturally the lower ground muſt ſuffer and receiue the water & filth which falleth from the higher grounde, nor ſuch as Iuſtinian ſpeaketh of, de ſeruitudinibus prædiorum ruſticorum & vrbanorum, but the land doth bring a certaine kinde of ſeruitude to the poſſeſſor. For no man holdeth land ſimply free in England, but hee or thee that holdeth the Crowne of England: all others hold their lande in fee, that is, vppon a faith or truſt, and ſome ſeruice to bee done to another Lord of a manno, as his ſuperior, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the crowne.

So that if a man die, and it bee founde that hee hath land which hee holdeth, but of whom no man can tell, this is vnderſtood to be holden of the crowne, and in capite, which is much like to the knights ſeruice, and draweth vnto it three ſeruices, homage, ward, and marriage: that is, he ſhal ſweare to be his man, and to bee true vnto him of whom he holdeth the land: His ſonne who holdeth the land after the death of his Father, ſhal be married where it pleaſeth the Lord.

He that holdeth the land moſt freely of a temporall man (for franke almes and franke marriage hath another cauſe and nature) holdeth by fealty onely, which is, he ſhall ſweare to be true to the Lord, and doe ſuch ſeruice as appertayneth for the land which hee holdeth of the Lord.

So that all frée land in England is holden in fée, or feodo, which is as much to ſay, as in fide, or fiducia. That is, in truſt and confidence, that he ſhall be true to the Lord of whom he holdeth it, pay ſuch rents, doe ſuch ſeruice, and obſerue ſuch conditions as were annexed to the firſt donation. Thus all ſauing the Prince be not veri domini, but rather fiduciarij domini, and poſſeſſores.

This is a more likely interpretation then that which Littleton doth put in his booke, who ſaith that feodum, idem eſt quod hæreditas, which it doth betoken in no language. This hapneth many times to them who be of great witte and learning, yet not ſéene in manie tongues, nor marke not the deduction of words which time doth alter. Fides in Latine (the Gothes comming into Italy, and corrupting the language) was turned firſt into fede, and at this day in Italy they will ſay in fide, en fede, or ala fe. And ſome vncunning Lawyers that would make a new barbarous Latine word, to betoken land giuen in fidem, or as the Italian ſaith, in fide, or fe made it in feudum, or feodum. The nature of the word appeareth more euident in thoſe which we call to fef, feoff, or feoffees, the one be fiduciarij poſſeſſores, or fidei commiſſarij: the other is, dare in fiduciam, or fidei commiſſum, or more Latinely, fidei committere.

Littleton did not interpret the worde feodum ſimplex, but rather define or deſcribe the nature therof.

The ſame Littleton was as much deceiued in withernam, and diuers other old words. This withernam, as he interpreteth vetitum namium, in what language I know

knowe not: whereas in trueth it is in plaine Dutch, and in our olde Saxon language, wyther nempt, alterum accipere, or vicissim rapere, a word that betokeneth that which in barbarous Latine is called represalia, when one taking of me a distresse, which in Latine is called pignus, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him againe or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of represalia, and that we call withernam, is not altogether one: but the nature of them both is as I haue described, and the proper signification of the wordes doe not much differ.

But to returne thither where wee did digresse: yée see that where the persons be frée, and the bodies at full liberty, and maxime ingenui, yet by annexing a condition to the Land, there is meanes to bring the owners and possessours thereof into a certaine seruitude, or rather libertinity: That the Tenants beside paying the rent accustomed, shall owe to the Lord a certaine faith, duty, trust, obedience, and (as wee terme it) certaine seruice, as Libertus, or Cliens patrono: which because it doth not consist in the persons, for the respect in them doth not make them bond, but in the land and occupation thereof, it is more properly expressed in calling the one Tenant, the other Lord of the fée, then eyther libertus or cliens can doe the one, or patronus the other: for these words touch rather the persons, and the office and duty betweene them, than the possessions: but in our case leauing the possession and land, all the obligation of seruitude and seruice is gone.

Another kinde of seruitude or bondage is vsed in England for the necessity thereof, which is called apprentice-

prenticehod. But this is onely by couenant, and for a time, and during the time it is *vera seruitus*. For whatsoeuer the Apprentize getteth of his owne labour, or of his maisters occupation or stocke, hee getteth to him whose Apprentize hee is, hée must not lie foorth of his maisters dores, hee must not occupy any stocke of his owne, nor marry without his maisters licence, and he must doe all seruile offices about the house, and be obedient to all his maisters commaundements, and shall suffer such correction as his maister shall thinke méete, and is at his maisters cloathing and nourishing, his maister being bound onely to this which I haue sayde, and to teach him his occupation, and for that he serueth, some for seauen or eight yeares, some nine or tenne yeares, as the maisters and the friendes of the young man shall thinke méete, or can agrée: altogether (as Polidore hath noted) quasi pro emptitio seruo: neuertheleſſe, that neyther was the cauſe of the name Apprentize, neither yet doth the word betoken that which Polidore ſuppoſeth, but it is a French word, and betokeneth a learner or ſcholler.

Apprendre in French is to learne, and Apprentize is as much to ſay in French (of which tongue wee borrowed this worde, and many more other) as Diſcipulus in Latine: Likewiſe hee to whom hee is bound, is not called his Lorde, but his maiſter, as yée would ſay, his Teacher. And the pactions agréed vpon, be put in writing, ſigned, and ſealed by the parties, and regiſtred for more aſſurance. Without being ſuch an Apprentize in London, and ſeruing out ſuch a ſeruitude in the ſame Citty for the number of yeares agréed vpon, by order of the Citty amongſt them, no man being neuer ſo much borne in London, and of Parentes Londoners, is admitted to be a Cittizen or frée-man of London: the like is vſed in other great Citties of Eng-

land.

land. Beſides Apprentizes, others be hired for wages, and be called Seruaunts, or ſeruing men and women throughout the whole Realme, which be not in ſuch bondage as Apprentizes, but ſerue for the time for daily miniſtery, as ſerui and ancillæ did in the time of gentility, and be for other matters in liberty as full frée men and women.

The ſons of free men of London are alſo free by birth, according to the cuſtome.

But all ſeruaunts, labourers, and others not married, muſt ſerue by the yéere: and if he be in couenant, he may not depart out of his ſeruice without his maiſters licence, and he muſt giue his maiſter warning that hee will depart, one quarter of a yéere before the terme of the yéere expireth, or elſe he ſhall be compelled to ſerue out another yéere. And if any young man vnmarried be without ſeruice, he ſhall be compelled to get him a maiſter, whom he muſt ſerue for that yéere, or elſe he ſhall be puniſhed with ſtocks and whipping, as an idle vagabond. And if any man, married or vnmarried, not hauing rent or liuing ſufficient to maintaine himſelfe, doe liue ſo idly, he is enquired of, and ſometime ſent to the Jayle, ſometime otherwiſe puniſhed as a ſturdy vagabond: ſo much our policy doth abhor idlenes. This is one of the chiefe charges of the Juſtices of peace in euery ſhire. It is taken for vngentlenes & diſhonor, & a ſhew of enmity, if any gentleman do take another gentlemans ſeruant (although his maiſter hath put him away) without ſome certificate from his maiſter, either by word or writing, ỹ he hath diſcharged him of his ſeruice. That which is ſpoken of men ſeruants, the ſame is alſo ſpoken of women ſeruants. So that all youth that hath not ſufficient reuenues to maintaine it ſelfe, muſt néedes with vs ſerue, & that after an order as I haue written. Thus neceſſity & want of bondmen hath made men to vſe frée men as bondmen to all ſeruile ſeruices: but yet more liberally & freely, and with a more equality and mode-

rati-

ration, than in time of gentility slaues and bondmen were wont to be vsed, as I haue said before. This first and latter fashion of temporall seruitude, & vpon paction, is vsed in such Countries as haue left off the olde accustomed manner of seruants, slaues, bondmen, and bondwomen, which was in vse before they had receaued the Christian faith. Some after one sort, and some eyther more or lesse rigorously, according as the nature of the people is enclined, or hath deuised amongst themselues for the necessity of seruice.

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court, Christian, Curia Christianitatis.

CHAP. 11.

THe Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them, especially in foure manner of causes: Testaments and legations, Tithes and mortuaries, marriage and adultery or fornication, and also of such things as appertaine to orders amongst themselues, and matters concerning Religion. For as it doth appeare, our Auncestors hauing the common-wealth before ordained and sette in frame, when they did agree to receaue the true & Christian Religion, that which was established before, and concerned externe policy (which their Apostles, Doctors, and Preachers did alow) they held and kept still with that which they brought in of newe. And those things in keeping whereof they made conscience, they committed to them to be ordered and gouerned as such things of which they had no skill, & as to men in whom for the holines of their life and good conscience, they had a great and sure confidence. So these matters be orde-

red in their Courts, and after the fashion and manner of the law ciuill, or rather common, by citation, libell, *contestationem litis*, examination of witnesses priuily, by exceptions, replications a part and in writing, allegations, matters by sentences giuen in writing, by apellations from one to another, as well *à grauamine* as *à sententia definitiua*, & so they haue other names, as Proctors, Aduocates, Assessors, Ordinaries, and Commissaries, &c. farre from the maner of our order in the common law of England, and from that fashion which I haue shewed you before. Wherefore if I say the Testament is false and forged, I must sue in the spirituall Lawe, so also if I demaund a legacie: but if I sue the Executor or Administrator, which is he in our Lawe, who is in the ciuill law *hæres*, or *bonorum mobilium possessor ab intestato*, for a debt which the dead ought me, I must sue in the temporall Court. These two Courts the Temporall and the Spirituall, be so deuided, that whosoeuer sueth for any thing to Rome, or in any Spirituall Court for that cause or action, which may bee pleaded in the Temporall Court of the Realme, by an olde law of England he falleth into a *præmunire*, that is, he forfaiteth all his goods to the Prince, and his body to remaine in prison during the Princes pleasure: and not that only, but the Iudge, the Scribe, the Procutor, and Assessor which receaueth and doth maintaine that vsurped pleading, doth incurre the same danger. Whether the word *præmuniri* doth betoken that the authority and iurisdiction of the Realme is prouided for before, and defended by that Lawe, and therefore it hath that name *præmunire* or *præmuniri*, or because that by that law such an attemptour hath had warning giuen before to him of the danger, into which he falleth by such attempt, and then *præmunire* is barbarously written for *præmonire*, *præmoniri* (as some men haue held opinion) I will

will not define: the effect is as I haue declared: and the Lawe was first made in King Richard the seconds time, and is the remedy which is vsed when the spirituall iurisdiction will goe about to encroach any thing vpon the Temporall Courts. Because this Court or forme which is called *curia christianitatis*, is yet taken as appeareth for an exterme and forraine Court, and differeth from the policy and manner of gouernment of the Realme, and is an other Court (as appeareth by the act and writ of *præmunire*,) than *curia regis aut reginæ*: yet at this present this Court as well as others, hath her force, power, authority, rule, and iurisdiction, from the royall Maiestie, and the crowne of England, and from no other forraine potentate or power vnder God, which beeing graunted (as in deede it is true) it may nowe appeare by some reason that the first Statute of *præmunire* whereof I haue spoken, hath nowe no place in England, seeing there is no pleading *a libi quam in curia regis ac reginæ*.

I haue declared summarily as it were in a chart or map, or as Aristotle termeth it ὡς ἐν τύπῳ the forme and maner of gouernment of England, and the policy therof, and set before your eyes the principall points wherein it doth differ from the policy or gouernment at this time vsed in Fraunce, Italy, Spaine, Germanie, and all other Countries, which doe follow the ciuill law of the Romaines, compiled by Iustinian into his pandects and code: not in that sort as Plato made his commonwealth, or Xenophon his kingdome of Persia, nor as Sir Thomas More his Vtopia, beeing fained commonwealths, such as neuer was nor neuer shall be, vaine imaginations, phantasies of Philosophers to occupie the time, and to exercise their wits: but so as England standeth, & is gouerned at this day the xviij. of March. Anno 1565. in the vij. yeare of the raigne and admi-

niſtration thereof by the moſt vertuous & noble Quéne Elizabeth, daughter to King Henry the eight, and in the one and fiftieth yeare of mine age, when I was Ambaſſadour for her Maieſtie, in the Court of Fraunce, the Scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, hauing then raigned foure yeares. So that whether I write true or not, it is eaſie to be ſéene with eyes (as a man would ſay) and felt with hands. Wherefore this being as a proiect or table of a common-wealth truly laid before you, not fained by putting a caſe: let vs compare it with common-wealths, which be at this day in eſſe, or doe remaine deſcribed in true Hiſtories, eſpecially in ſuch points wherein the one differeth from the other, to ſée who hath taken righter, truer, and more commodious way to gouerne the people as well in war as in peace. This will be no illiberall occupation for him that is a Philoſopher, and hath a delight in diſputing, nor vnprofitable for him who hath to doe, and hath good will to ſerue the Prince and common-wealth, in giuing counſaile for the better adminiſtration thereof.

Thomas Smith.